



# Report and Recommendations

Statewide Jury Selection Workgroup: A Workgroup of  
the Task Force on Jury Data Collection, Practices, and  
Procedures

*November 1, 2021*

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# Report and Recommendations

## Statewide Jury Selection Workgroup: A Workgroup of the Task Force on Jury Data Collection, Practices, and Procedures

### Executive Summary

#### Creation and Charge of the Workgroup

The Task Force on Jury Data Collection, Practices, and Procedures was created on March 10, 2021, by Administrative Order No. 2020-35 (“AO 2020-35”).<sup>1</sup> Before the Task Force submitted its initial report on October 4, 2021, the Arizona Supreme Court eliminated the use of peremptory challenges beginning January 1, 2022, for all jury trials in Arizona.<sup>2</sup>

Given this change, the Arizona Supreme Court referred to the Task Force the responsibility of reviewing the various sets of Arizona court rules to assess whether additional changes may be appropriate.<sup>3</sup> The Supreme Court also asked that the Task Force prepare best practices for jury selection and to outline potential training that may be proper to ensure that judges conduct voir dire in a manner to secure a fair and impartial jury.

To respond to the Supreme Court’s directive, a subgroup of members of the Task Force agreed to participate on the Statewide Jury Selection Workgroup (“SJSW”). Additional members were added to the SJSW to ensure representation from various stakeholder groups, including lawyers with diverse practice areas in urban and rural counties, lawyers with civil and criminal experience, as well as individuals with practice area specialization.

#### Recommendations

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Rule and Statutory  
Amendments

Revisions to Bench Book  
Scripts and Creation of  
Case-Specific  
Questionnaire  
Templates

Statewide Training  
Program

<sup>1</sup> See Ariz. Sup. Ct. Admin. Order No. 2021-35 [2021-35.pdf \(azcourts.gov\)](https://www.azcourts.gov/2021-35.pdf).

<sup>2</sup> See Ariz. Supr. Ct. Or. No. R-21-0020 (Aug. 30, 2021) (removing peremptory challenges from the Rules of Civil and Criminal Procedure); Ariz. Supr. Ct. Or. No. R-21-0020 (Sept. 28, 2021) (removing peremptory challenges from the Justice Court Rules of Civil Procedure, and the Rules of Procedure for Eviction Actions).

<sup>3</sup> Ariz. Supr. Ct., *Rule Amends. from Recent Rule. Agenda(s)*, <https://www.azcourts.gov/rules/Rule-Amendments-from-Recent-Rules-Agenda-s>; see Ariz. Supr. Ct. Mins. from Aug. 24, 2021, Meeting.

### The Workgroup and Its Process

The SJSW divided into three workgroups: 1) the Rules Group, which was focused on reviewing the rules and recommending any potential changes to the rules; 2) the Best Practices Group, which concentrated on best practices for jury selection; and 3) the Training Group, which developed an outline for educational programs and material.

The individual groups met frequently to prepare material for consideration by all members of the SJSW. The full workgroup met several times to review and provide feedback and direction to the smaller groups. Ultimately, all recommendations set forth in this report were unanimously approved by all members of the SJSW.

### Summary of the SJSW Recommendations



#### I. Proposed Rule Changes

The Task Force's October 4, 2021, report guided the SJSW in recommending changes to the rules. The Task Force recommended elimination of peremptory challenges and that courts provide more robust procedural rules to improve the process governing for-cause strikes.<sup>4</sup> To implement these proposals, the Task Force suggested two pertinent procedural changes: (1) using case-specific juror questionnaires when feasible and (2) allowing sufficient and meaningful time for the court and parties to question prospective jurors.<sup>5</sup>

To formulate its recommendations, the Rules Group also considered Rule Petitions R-21-0020 and R-21-0008, the comments and replies to them, which comprehensively discussed the role of peremptory strikes in safeguarding against seating biased jurors and how peremptory challenges have been used to challenge prospective jurors for improper reasons. The Rules Group also reviewed procedural rules from numerous jurisdictions, law review articles, and information from Canada, which recently eliminated peremptory strikes.

The Rules Group also found particularly helpful the presentation of Dr. Karen Lisko and Dr. Jeff Frederick on best practices for increasing juror candor during jury selection and Professor Jessica M. Salerno's recent study entitled *The Impact of Minimal Versus Extended Voir Dire and Judicial Rehabilitation on Mock Jurors' Decisions in Civil Cases*.<sup>6</sup>

Based on these sources, the SJSW concluded that the elimination of peremptory challenges should be accompanied by robust jury selection procedures designed to uncover and elicit bias, reduce to the greatest extent possible reliance on impermissible stereotypes, and maintain the public's confidence

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<sup>4</sup> Task Force, *Report and Recommendations*, at 7 (Oct. 4, 2021), available at: <https://www.azcourts.gov/Portals/74/Jury%20TF/Resources/Final%20Report%20Posting%20JTF%20100421.pdf?ver=2021-10-04-171251-953>.

<sup>5</sup> *Id.*

<sup>6</sup> Jessica M. Salerno, et al., *The Impact of Minimal Versus Extended Voir Dire and Judicial Rehabilitation on Mock Jurors' Decisions in Civil Cases*, 45 *Law & Hum. Behav.* 336 (2021).

that jury verdicts are fair and impartial. To these ends the SJSW unanimously recommends that Arizona's procedural rules and their accompanying comments be amended to:

- Encourage case-specific written juror questionnaires when feasible;
- Permit extended oral voir dire with increased participation from the parties and an emphasis on open-ended questions;
- Discourage attempts by the trial judge to rehabilitate prospective jurors through leading, conclusory questioning;
- Respect for the difference in summoning practices of each court;
- Maintain proportionality in the length of jury selection to the complexity of the case;
- Ensure a comprehensive record of all case-specific answers provided during voir dire; and
- Maintain juror privacy.

Finally, the SJSW recognized that its recommendations must be practical, preserve judicial discretion to manage jury trials, not unduly extend trials, and be capable of implementation by January 1, 2022. Because the Task Force does not expire until June 30, 2022, if the Supreme Court enters an order adopting the rules changes proposed herein, in whole or in part, the SJSW can monitor any comments to and implementation of the proposed amendments and consider further amendments if necessary.



### *II. Proposed Revisions to Bench Book Scripts and Recommended General Civil and Criminal Case-Specific Questionnaire Templates*

The framework created by the proposed rule changes and their associated comments broadly reflect the SJSW's best practices for jury selection. To implement these proposed changes to voir dire in the post-peremptory challenge landscape, the SJSW recommends changes to the Bench Book voir dire scripts and has proposed three case-specific questionnaire templates: general criminal (long); general criminal (short); and general civil. These materials are designed to provide more robust jury selection practice that will secure better quality information for the exercise of for-cause strikes.

The SJSW spent considerable time researching and working with experts to identify the most effective way to obtain the most candid information from prospective jurors. The assistance of Dr. Karen Lisko, Dr. Jeff Frederick, and Professor Jessica M. Salerno was important in shaping these recommendations. Research has shown at least two advantages in using written questionnaires. First, prospective jurors are often uncomfortable discussing in open court sensitive matters such as substance abuse, mental health, prior experiences as the victim of a crime, and other personal topics. Second, prospective jurors provide more complete and candid answers to these sensitive questions in a private setting such as a written juror questionnaire.

Both the voir dire scripts and case specific questionnaires are designed around the following best practices:

- Employing written or online case-specific questionnaires to obtain answers to questions that may be more sensitive or private, such as information the juror may know about the case, a juror's opinions or attitudes regarding relevant issues, and prior pertinent life experiences.
- Including a blend of open-ended and close-ended questions.
- Limiting questionnaires to less than 60 questions.
- Asking questions during oral voir that avoid leading a juror into a socially appropriate answer.
- Providing the jurors with information and instruction on the importance of disclosing and discussing attitudes, beliefs, opinions, and life experiences that may affect a juror's ability to be fair and impartial.
- Permitting questioning by the parties.
- Avoiding attempts by the judge to rehabilitate a prospective juror through leading questions.

The SJSW is sensitive to the burden that drafting a new questionnaire for each case could impose. Therefore, the template questionnaires are offered as a starting point. The parties can add additional case specific questions as necessary. The SJSW also recommends that Arizona Supreme Court and AOC develop a repository for these questionnaires and an online tool to allow courts statewide to access, modify, and deploy questionnaires. The SJSW and the AOC have worked on potential technology solutions to allow courts to have access to and use of written or online case-specific juror questionnaires by January 1, 2022.

While the primary benefit of the questionnaires is more complete information to exercise for-cause strikes, such questionnaires can lead to greater efficiencies on jury selection. In some courts prospective jurors can complete a case-specific questionnaire before coming to court, allowing judges and the parties to exercise some strikes, such as for hardship or other agreed upon for-case basis before a prospective juror has to travel to court. The questionnaires also will provide parties information to prepare more meaningful in-person voir dire.

Finally, the SJSW understands that questionnaires are not practical for every case. Recommended Bench Book scripts have also been drafted to incorporate the same principals as the recommended questionnaires.

The SJSW recognized that its recommendations must be practical and be capable of implementation by January 1, 2022. These recommendations are therefore a starting point. Because the Task Force does not expire until June 30, 2022, if the Supreme Court adopts these recommendations, the SJSW can monitor the use of the questionnaire and scripts, propose any necessary amendments, and assist in developing additional specialty questionnaires based on input from the bench and bar.



### *III. Proposed Program of Statewide Training*

The SJSW recommends training that teaches courts and litigants how to implement the best practices outlined above and emphasizes the change in philosophy for jury selection toward neutralism



and away from seeking advantage through voir dire. While judicial training will be necessary to implement these goals, the SJSW suggests that the Arizona Supreme Court leverage existing partnerships with stakeholder groups, such as the civil and criminal sections of the State Bar, to develop robust statewide lawyer-focused training that provides both the theoretical and practical knowledge to effectively perform voir dire. The SJSW is aware that those groups will already be determined to train on these subjects, so coordination would be most effective.

The Arizona Supreme Court's decision to eliminate peremptory challenges affects the prosecution, plaintiffs, and defense equally. The SJSW recommends training that explains the shift from allowing each side to pick a jury that they believe is best for their case, to a jury selection system that focuses solely on whether prospective jurors could be fair and impartial. This program of training will also help courts and litigants better implement this bedrock policy of neutrality.

Given the increased emphasis on case-specific written questionnaires, judges and litigants should receive training that teaches their purpose and how they should function during jury selection. The SJSW recommends training that focuses on the purpose behind case-specific written questionnaires and how they can be used to focus oral voir dire, best practices for modifying template questionnaires and how they can be used to focus oral voir dire, modified for use in specific case types, and streamline the in-court jury selection process.

For oral voir dire, the SJSW recommends a two pronged approach that educates judicial officers on the importance of allowing lawyers to participate in voir dire and the need to avoid rote rehabilitation with unnecessary closed-ended questions, and training for lawyers that teaches how to effectively incorporate open-ended questioning in voir dire to effectively identify both explicit and implicit bias. The SJSW recommends practical training that teaches judges and lawyers how to put open-ended questioning into practice and how to ask effective follow-up questions. Consistent with the Task Force's recommendation, the SJSW also recommends that the statewide video used during jury orientation include new content aimed at normalizing the concept of discussing implicit bias and underscore the importance of candor and openness during the jury selection process

## Discussion of Recommendations

### I. Recommended Rule Amendments

The SJSW undertook a comprehensive review of Arizona's jury selection procedural rules to ensure that jury selection in the absence of peremptory challenges was efficient and effective at eliciting improper bias and incorporating the SJSW's goals outlined above. Based on that review, the SJSW recommends amending the following procedural rules:

- Arizona Rules of Civil Procedure ("Civil Rules") 16 and 47 (Appendix 1A);
- Arizona Rules of Criminal Procedure ("Criminal Rules") 16.3, 18.3, 18.4, and 18.5 (Appendix 1B);

- Arizona Justice Court Rules of Civil Procedure, (“Justice Court Civil Rules”) Rule 134 (Appendix 1C); and
- Rules of Procedure for Eviction Actions, Rule 12 (“Eviction Action Rules”) (Appendix 1D).

While conducting its review, the Rules Workgroup identified two statutes that reference peremptory challenges that the Arizona Legislature should consider amending:

- A.R.S. § 22–223(B), authorizing peremptory challenges in Justice Court civil cases and
- A.R.S. § 26–1041(B), authorizing peremptory challenges in Arizona National Guard court martial.

The SJSW determined that only A.R.S. § 22-223(B) warranted any type of legislative action to align the statute with the Supreme Court’s orders abolishing peremptory challenges. Therefore, the SJSW recommends the statute be amended to remove the reference to peremptory challenges. (*See* Appendix 1E.)

The SJSW’s recommended amendments are attached in the appendices to this report. For the convenience of readers, the appendices reflect *both* the changes resulting from the Supreme Court’s amendments ordered by the original and amending orders eliminating peremptory challenges and the SJSW’s proposed amendments using the underline and strikethrough markup method. This allows readers to see the full impact of both the amendments previously ordered by the Court, effective January 1, 2022, and the SJSW further proposed amendments. The next sections of this Report set forth in detail the SJSW’s recommendations.

### A. Arizona Rules of Civil and Criminal Procedure

Both the Criminal and the Civil Rules of Procedure currently authorize case-specific questionnaires, yet neither set of rules emphasizes their use. The experience of the SJSW members and other stakeholders established that case-specific questionnaires have been used infrequently or only in more serious cases. The SJSW members agreed that case-specific written questionnaires should be used effectively and efficiently in more types of cases after the abolition of peremptory challenges. But rather than mandating the use of case-specific written questionnaires, the proposed amendments maintain judicial discretion and flexibility in determining if and when to use such questionnaires while also encouraging their use by incorporating procedures to propose and approve specific questions at pretrial conferences.

Research shows that case-specific juror questionnaires are effective.<sup>7</sup> Moreover, questionnaires will help offset lengthening of trials that may result from the SJSW’s recommendation for liberal and

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<sup>7</sup> *Salerno, et al., supra*, at 352 (“Notwithstanding the limitations of our studies, our findings are important in that they suggest the potential value of voir dire questionnaires that probe specific predispositions and biases directly relevant to civil litigation regarding medical malpractice and bad faith cases.”).

comprehensive oral “expanded voir dire.”<sup>8</sup> Attorney questioning will help elicit more candid answers, and will increase party participation during voir dire, a common concern raised by opponents of eliminating peremptory challenges.

Recognizing the belief that that peremptory challenges “provide a margin of protection for challenges for cause,” the SJSW identified the need for liberal and comprehensive voir dire to ensure the court and parties identify improper bias.<sup>9</sup> Importantly, the SJSW concluded that courts should authorize more direct questioning by the parties.<sup>10</sup>

Lastly, and as a technical point, the existing civil and criminal rules have substantively similar standards for voir dire and for-cause challenges. Thus, the proposed amendments to both the civil and criminal rules are substantively identical and are discussed jointly below, with notable textual differences identified in the explanations.

### *1. Rule of Civil Procedure 16 and Rule of Criminal Procedure 16.3.*

To ensure that the SJSW’s recommended presumption of case-specific written questionnaires and liberal and thorough voir dire is effective, the SJSW concluded that case-specific written questionnaires and the scope of oral voir dire must be discussed during pretrial conferences. Both the civil and criminal pretrial conference rules already had preexisting provisions addressing voir dire. The proposed amendments broadly amend these provisions to expressly incorporate written questionnaires and to address the scope of oral voir dire.

#### *a. Civil Rule 16(d).*

Civil Rule 16(d)(19) allows the court and the parties to discuss at a scheduling conference: “any time limits on trial proceedings, juror notebooks, brief pre-voir dire opening statements, and preliminary jury instructions, and the effective management of documents and exhibits.”

The SJSW considered proposing that this provision be amended to include case-specific written questionnaires and discussion of the scope of oral voir dire. However, it ultimately concluded that it was premature and unnecessary to discuss juror selection and the other related topics in Rule 16(d)(19) at a scheduling conference. As a result, the SJSW recommends eliminating Rule 16(d)(19) to ensure the rules do not impose unnecessary requirements on the parties.

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<sup>8</sup> See *id.* (“Although having potential jurors complete an extensive voir dire questionnaire takes some time, if the questionnaires were administered in advance of the trial, or just prior to voir dire questioning, it might actually save time.”).

<sup>9</sup> See Barbara D. Underwood, *Ending Race Discrimination in Jury Selection: Whose Right is it, Anyway?*, 92 Colum. L. Rev. 725, 771 (1992); *Salerno, et al., supra*, at 350 (“The findings from the present research suggest that generic questions requiring jurors to spontaneously and explicitly acknowledge that they cannot be impartial are unlikely to aid attorneys or presiding judges in that task.”).

<sup>10</sup> See Hon. Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection*, 4 Harv. J.L. & Tech. 149, 160 (2010) (“[E]mpirical research suggests that potential jurors respond more candidly and are less likely to give socially desirable answers to questions from lawyers than from judges.”).

### *b. Civil Rule 16(e).*

Civil Rule 16(e)(2) presently allows the parties to discuss “using juror questionnaires” and “giving brief pre-voir dire opening statements” in two separate subdivisions.<sup>11</sup> After discussion, the SJSW concluded that the trial-setting conference was well suited to discuss voir dire. Thus, SJSW recommends consolidating the existing references to juror questionnaires and pre-voir dire opening statements into proposed Rule 16(e)(2)(D) to read: “the court may discuss at the Trial-Setting Conference . . . the areas of inquiry and specific questions to be asked by the court and the parties during voir dire, including any limitations on written or oral examination, and whether to permit the parties to give brief pre-voir dire opening statements.”

To provide flexibility, proposed Rule 16(e)(2)(D) includes both written and oral voir dire. The court and parties can discuss either written, oral, or both forms of voir dire where appropriate for the case.

### *c. Civil Rule 16(f).*

Civil Rule 16(f) governs the pretrial conference and specifies the items the parties must provide in a pretrial statement.<sup>12</sup> The rule also requires that parties file a separate document that lists “oral voir dire questions.”<sup>13</sup> Rather than alter the contents of the pretrial statement, the SJSW proposes amending Rule 16(f)(4) to require the parties to file both agreed-upon and disputed questions for a case-specific written questionnaire.

### *d. Criminal Rule 16.3(c).*

Criminal Rule 16.3 allows the court to require the parties to “confer and submit memoranda” in advance of a pretrial conference. Consistent with the approach taken for Civil Rule 16(f), the SJSW recommends amending Criminal Rule 16.3(c) to allow the court to require that the parties submit written and oral voir dire questions before a pretrial conference.

### *e. Criminal Rule 16.3(d).*

Like existing Civil Rule 16(e)(2), Rule 16.3(d) of the Rules of Criminal Procedure allows the court and parties to discuss “giving brief voir dire opening statements” at a pretrial conference. The SJSW recommends amending Criminal Rule 16.3(d) by adding new subparagraph (4) that is identical to the proposed amendment to Civil Rule 16(e)(2)(D) that references both written and oral examination and brief pre-voir dire opening statements.

### *f. Civil Rule 47(b) and Criminal Rule 18.3.*

The SJSW’s recommendation to increase the use of case-specific written questionnaires in turn created juror privacy concerns. Case-specific written questionnaires will necessarily elicit personal and sensitive information that prospective jurors may be reluctant to share in writing unless they know how

<sup>11</sup> Ariz. R. Civ. P. 16(e)(2)(D) & (F).

<sup>12</sup> Ariz. R. Civ. P. 16(f)(2).

<sup>13</sup> Ariz. R. Civ. P. 16(f)(4).

the information will be used and whether the information will become public. Completed case-specific written questionnaires are part of voir dire and must be maintained as part of the case file, distributed to the parties and their respective staff for purposes of jury selection, and may be used to challenge prospective jurors, on the record, in written motions, and on appeal. Thus, written questionnaires, could easily be distributed online and could provide a potential source of information that may be improperly relied on by employers and others. The SJSW therefore concluded that completed questionnaires should be maintained confidentially as permitted by Rule 123, Arizona Rules of the Supreme Court, and state and federal constitutions to encourage complete, candid answers. In this aid of confidentiality, courts may decide to make findings necessary to seal the questionnaires or personal identifying information in them.<sup>14</sup>

Complicating the proposal, both the civil and criminal rules contain provisions that require the court to obtain certain eligibility and biographical information before trial.<sup>15</sup> The forms that collect that information are currently identified as questionnaires in some instances and biographical information forms in others.<sup>16</sup> These eligibility and biographical forms are not part of the voir dire and will have document retention and confidentiality requirements differing from case-specific written questionnaires.

To resolve these issues, the SJSW recommends amending both Civil Rule 47(b) and Criminal Rule 18.3 to distinguish between the two types of information solicited from prospective jurors by creating different provisions for “eligibility and biographical information” and “case-specific written questionnaires.” The proposal retains the existing privacy protections for “eligibility and biographical information” and creates new privacy protections for “case-specific written questionnaires.” The SJSW additionally recommends that the Administrative Office of the Courts (“AOC”) amend the Arizona Code of Judicial Administration to implement the technical public records and document retention policies for the new case-specific written questionnaires.

### *g. Civil Rule 47(b)(1) and Criminal Rule 18.3(a).*

The SJSW recommends minor amendments to Civil Rule 47(b)(1) and Criminal Rule 18.3(a). First, the SJSW recommends clarifying that that juror eligibility and biographical information be given to the parties before oral voir dire. Second, the SJSW recommends for clarity the current provisions requiring that juror eligibility and biographical information be kept confidential be moved to new paragraphs, which would become Civil Rule 47(b)(2) and Criminal Rule 18.3(b).

### *h. Civil Rule 47(b)(2) and Criminal Rule 18.3(b).*

The SJSW proposes that Civil Rule 47(b)(2) become a new paragraph that incorporates the existing privacy protections for juror eligibility and biographical information. This change would conform

<sup>14</sup> Ariz. R. Sup. Ct. 123(e)(10) (Juror Records. The home and work telephone numbers and addresses of jurors, *and all other information obtained by special screening questionnaires or in voir dire proceedings that personally identifies the juror summoned for service*, except the names of jurors on the master jury list, are confidential unless disclosed in open court or otherwise opened by order of the court.).

<sup>15</sup> Ariz. R. Civ. P. 47(b)(2); Ariz. R. Crim. P. 18.3(a)-(b).

<sup>16</sup> See Ariz. Code of Jud. Admin. §§ 2-101(D)(15)(b)(1)-(2), (D)(15)(c)(1), (D)(15)(d); 5-203(C)(1)-(2).

proposed Rules of Civil Procedure 47(b)(1) and (2) to proposed Rules of Criminal Procedure 18.3(a) and (b), to ensure that juror eligibility and biographical information remains protected.

*i. Civil Rule 47(b)(3) and Criminal Rule 18.3(c).*

The SJSW proposes substantial edits to Civil Rule 47(b)(2) and creation of a new paragraph in proposed Criminal Rule 18.3(c) that would match proposed Civil Rule 47(b)(3). The proposed amendment clarifies that this paragraph applies to case-specific written questionnaires. It requires that they be maintained as part of the case file in a manner and form approved by the court, that each party receives the responses before conducting oral voir dire, and that a prospective juror’s privacy is protected to the extent permissible under the United States and Arizona Constitutions and Rule 123(e)(10) of the Arizona Rules of the Supreme Court.<sup>17</sup>

As noted, the SJSW concluded that case-specific questionnaires and each prospective juror’s responses to those questionnaires must be maintained as part of the case file, as those responses may be the basis for juror challenges, subject to motions, and part of issues on appeal. The SJSW was also concerned that completed case-specific written questionnaires would contain potential personal and sensitive information of a prospective juror and because they are in writing and maintained as part of the case file, making the answers more accessible than responses elicited in oral voir dire.

The SJSW recommends the court discuss whether the questionnaires will be maintained under seal or whether portions will be sealed to protect the privacy of each juror’s responses to case-specific questionnaires. The SJSW also recommends the court inform prospective jurors of the level of privacy applied to their responses to the written questionnaires. The SJSW believes these two provisions would make case-specific written questions more effective by encouraging prospective jurors to give more thoughtful and candid answers.

Although the SJSW initially considered proposing revisions to the rules to require the court to maintain all case-specific questionnaires under seal, it abandoned that preference to avoid constitutional challenges.<sup>18</sup>

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<sup>17</sup> Ariz. R. Sup. Ct. 123(e)(10), *supra* n. 14.

<sup>18</sup> See *Press-Enter. v. Superior Court*, 478 U.S. 1 (1984); Ariz. Const. art. 2, § 11 (“Justice in all cases shall be administered openly, and without unnecessary delay.”). Juror questionnaires are part of voir dire, which is generally open to the public, and other courts have usually rejected trial court orders sealing case-specific written questionnaires without particularized findings. See *Copley Press, Inc. v. Superior Court*, 228 Cal. App. 3d 77, 89-90 (1991) (“[T]he blanket denial of access to the questionnaires here was unconstitutional.”); See *In re Jury Questionnaires*, 37 A.3d 879, 889 (D.C. Ct. App. 2012) (“[T]he trial court must start with the presumption that the completed jury questionnaires should be disclosed in their entirety.”); *Huber v. Rohrig*, 791 N.W.2d 590, 601 (Neb. 2010) (“[V]oir dire begins with the juror questionnaires and that unless good cause is established, voir dire should be open to the public.”); *Stephens Media, LLC v. Eighth Jud. Dist. Ct.*, 221 P.3d 1240 (2009) (“Accordingly, we conclude that the First Amendment’s qualified right of access extends to juror questionnaires prepared in anticipation of oral voir dire.”) *State v. Beskurt*, 293 P.3d 1159, 1162 (Wash. 2013) (addressing an analogous Washington State constitutional provision and state privacy rules. Of note, the Arizona Court of Appeals recently reaffirmed, “Individuals who are called for jury duty do not forfeit their privacy rights when they are called for jury duty.” *Morgan v. Dickerson*, 2 CA-SA 2021-0007, 49 Ariz. Cases Digest 4, \_\_\_ ¶ 19 (App. July 20, 2021) (quoting *Stewart v. Carroll*, 214 Ariz. 480, ¶¶ 4, 18, 20 (App. 2007)). And Arizona law includes numerous privacy protections for



The SJSW is mindful that courts will need to balance these concerns to ensure that case-specific written questionnaires do not conflict with Arizona’s anonymous jury system, are maintained as part of the case file, and given the appropriate level of protection as determined by the court.

To reinforce privacy concerns, the SJSW also recommends that the parties be allowed to use case-specific written questionnaires “only to the extent necessary for the proper conduct of the case.” After jury selection, the questionnaires must either be returned or destroyed, as directed by the court. Because the responses are maintained in the case file, the parties would have access to case-specific questionnaires if necessary.

*j. Civil Rule 47(c) and Criminal Rule 18.5(a)-(c).*

The SJSW recommends three substantive changes to the above-referenced rules to: (1) ensure that case-specific written questionnaires are either sworn or affirmed to be truthful; (2) provide prospective jurors an explanation of the purpose of voir dire before both written and oral voir dire, how the parties use the information, and who may have access to the information; and (3) urge courts and parties to use case-specific written questionnaires.

Both existing Civil Rule 47(c)(1) and Criminal Rule 18.5(a) require that prospective jurors swear or affirm that their answers during voir dire will be truthful. The SJSW recommends that both rules require that prospective jurors must either swear or affirm that their answers on a case-specific written questionnaire are truthful. Case-specific written questionnaires are part of voir dire and subject to both statutory and rule-based requirements to provide an oath or affirmation.<sup>19</sup> Additionally, requiring that case-specific questionnaires be sworn or affirmed, will underscore for prospective jurors the importance of providing thorough, complete, and candid answers.

Proposed Civil Rule 47(c)(1) differs from proposed Criminal Rule 18.5(a), because Civil Rule 47(c)(1) already includes the specific oath within the rule. Because the proposed amendments establish the importance of conveying to prospective jurors the need for truthful answers, the workgroup decided that it was unnecessary to make the rules identical.

Based primarily on existing Criminal Rule 18.5(c) and American Bar Association Jury Selection principles, the SJSW recommends adding in new paragraphs to both the civil and criminal rules,

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prospective jurors. See A.R.S. §§ 21–202(B)(1)(c) & (B)(4)(e) (providing that certain documents to establish hardship “shall not be disclosed to the general public”); 21–312(A)–(B) (providing that “[t]he list of juror names or other juror information shall not be released unless specifically required by law or ordered by the court” and “[a]ll records that contain juror biographical information are closed to the public and shall be returned to the jury commissioner, the jury manager or the court when jury selection is completed and may not be further disclosed or disseminated by a party or the party’s attorney”); Ariz. R. Crim. P. 23.3 (“When polling a jury, the court must not identify individual jurors by name, but must use such other methods or form of identification that are appropriate to ensure the jurors’ privacy and an accurate record of the poll.”); Ariz. Supr. Ct. R. 123 (e)(10) (juror eligibility and biographical material is confidential). The Arizona Court of Appeals also recently affirmed Arizona’s use of innominate juries. *Morgan*, 4 Ariz. Cases Digest 49, at ¶ 21 (“The respondent judges therefore did not abuse their discretion or act without authority in proceeding with innominate juries.”).

<sup>19</sup> A.R.S. §§ 21–131(C), 21–315(B); see Ariz. Code Jud. Conduct § 5-203(C)(2).

requiring that courts explain before both written and oral examination the purpose of voir dire, how the parties will use prospective juror information, and who may access that information.<sup>20</sup>

The SJSW concluded that these explanations will help jurors understand the importance of voir dire, eliciting more thorough, complete, and candid answers. Additionally, given the personal and sensitive information solicited on case-specific questionnaires, the proposed explanation provides transparency, building public confidence in the judicial system.

Lastly, the SJSW discussed whether it was necessary to require an explanation before both written and oral examination. Because the explanation is brief, helpful for prospective jurors, and provides transparency, the workgroup concluded it was valuable to repeat the explanation before both stages of voir dire.

As discussed above, the SJSW recommends using case-specific questionnaires where feasible. These questionnaires will allow the parties to conduct a more thorough examination, mitigate any increase to the length of trial stemming from the SJSW's recommendation for more liberal and comprehensive oral examination, and promote public confidence that verdicts are rendered fairly and impartially. To that end, the SJSW recommends adding proposed Civil Rule 47(c)(3) and proposed Criminal Rule 18.5(c) to urge that courts use case-specific written questionnaires and provide guidance on what those questionnaires should provide.

First, the recommendation creates a presumption that trial courts should use case-specific written questionnaires: “[u]nless the court orders otherwise, the court should require prospective jurors to complete a case-specific written questionnaire . . . .” Of note, the proposed language is permissibly written, stating that trial courts “should require” case-specific written questionnaires. The SJSW considered mandatory language, (e.g., courts “must require”), but concluded that permissive language in the proposal, when combined with the preference that the court issue an order before forgoing case-specific written questionnaires, created a presumption favoring the use of such questionnaires.

Second, the SJSW recommendation gives trial courts discretion to determine the manner of use and form for case-specific written questions to suit the individual needs of the case, preferences of the court, and requests of the parties. The SJSW, however, concluded it was important to provide guidance in the text of the rule by specifying that specific questionnaires should include questions designed to determine a juror's qualification to serve, any hardships that would prevent jury service, and any questions designed to determine whether a juror could render a fair and impartial verdict. Similarly, the SJSW recommends a comment to proposed Civil Rule 47(c)(3) and proposed Criminal Rule 18.5(c) to clarify that case-specific written questionnaires should be used where feasible, deferring to the court on

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<sup>20</sup> See *ABA Standards for Criminal Justice: Trial by Jury*, 15–2.2(c)(1) (“The jurors should be advised of the purpose of the questionnaire, how it will be used and who will have access to the information.”), available at [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_jurytrial\\_blk/#2.4](https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_jurytrial_blk/#2.4); ABA Jury Principles 6(C)(1) and 7(A)(4) (recommending that that courts explain the jury's role, how the court and parties will use jury information, how long it is retained, and who may access it), available at [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_juryaddendum/](https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_juryaddendum/).



whether to use paper or electronic questionnaires, administered before prospective jurors are assembled at the court or immediately before voir dire, or contain general questions or questions directed to the facts of the particular case. Even assuming written questionnaires are feasible, the proposed rules and comments do not mandate their use.

*k. Civil Rule 47(c)(4) & Criminal Rule 18.5(h).*

The SJSW recommends that both the existing provisions in the civil and criminal rules authorizing brief opening statements during voir dire be amended to clarify opening statements may be given before oral voir dire. This recommendation preserves existing practice, and depending on use, it may be impractical to allow brief opening statements before prospective jurors complete written questionnaires.

*l. Civil Rule 47(c)(5), Criminal Rule 18.5(d), (f), & Comment.*

Although the SJSW recommends that courts use case-specific written questionnaires, it does not believe that courts should substitute them for oral voir dire. Thus, the SJSW recommends amending both existing Civil Rule 47(c)(3) and existing Criminal Rule 18.5(b) to reaffirm that courts should conduct oral voir dire.

Additionally, the SJSW recommends clarifying language to ensure that a party's failure to submit questions before oral examination is not grounds to deny oral examination. This recommendation is needed so the proposed amendments that emphasize submitting voir dire questions during pretrial conferences are not mistakenly read to prohibit follow up questions by parties, even if they failed to submit questions during pretrial conferences.

Finally, the SJSW recommends specifying in proposed Criminal Rule 18.5(f) that courts allow the parties "sufficient time" for oral examination. The current rule provides that courts allow "reasonable time," and the SJSW concluded that replacing reasonable with sufficient would encourage courts to give the parties additional time to ask appropriate follow-up questions. The existing Rules of Civil Procedure do not have a similar limitation, and no amendment was required.

The SJSW also considered adding additional guidelines to proposed Civil Rule 47(c)(5) and proposed Criminal Rule 18.5(f), including a proposal from the State Bar's Criminal Practice and Procedure Committee, which would have limited courts' discretion to restrict the parties' oral voir dire. Ultimately the SJSW concluded that procedural rules should not unnecessarily restrict courts' discretion, but that a Comment would be beneficial in providing additional guidance on the rule changes and this significant shift in practice.

Accordingly, the SJSW proposes an identical comment to both Civil Rule 47(c)(5) and Criminal Rule 18.5(f) that encourages courts to permit liberal and comprehensive examination by the parties with open-ended questions, to elicit more candid answers and minimize tendencies to rely on demographic stereotypes. The Comment also encourages courts not to rehabilitate prospective jurors by asking leading and conclusory questions, such as, "despite your statement, could you fairly and impartially consider the evidence?"

In formulating the comment, three additional considerations are worth detailed discussion. Some SJSW members had proposed that either the text of the rules, or a comment, prohibit or discourage certain categories of questions, such as those listed by Washington General Rule 37. The SJSW determined that it was best not to include limits on questions to preserve flexibility, partially because its proposed Comment provides general guidance to the trial court by addressing the impropriety of striking jurors for cause based on discriminatory reasons.

Second, the SJSW originally considered a comment that specified trial courts should permit “liberal and probing” examination. That language was based on rules in both California and New Hampshire.<sup>21</sup> After discussing various formulations, it was decided that “liberal and comprehensive” better reflected the intent of the SJSW, guiding courts to permit ample oral voir dire that comprehensively assess whether prospective jurors could be fair and impartial.

Third, the proposed comment includes a citation to a recent publication that guided the recommendation. The SJSW discussed whether to include a citation to explain the phrases included in the comment, such as “extended voir dire” and “minimal voir dire.” It concluded that citing the article by Professor Jessica M. Salerno and colleagues would provide valuable insight to those applying the proposed rules, and because the article was instrumental in formulating the concepts included in the proposed comment.

*m. Civil Rule 47(d)(3), comment Civil Rule 47(d)(3) & Criminal Rule 18.4(b), & burden of proof changes.*

Unlike the Criminal Rule, existing Civil Rule 47(d) did not provide a burden of proof to establish a for-cause challenge. To ensure a consistent statewide policy, the SJSW recommends adding a burden of proof to Civil Rule 47(d) in new paragraph 3, which is identical to the burden of proof adopted by the Arizona Supreme Court’s August 31, 2021, order amending Criminal Rule 18.5.

To accompany the burden of proof in proposed Civil Rule 47(d)(3) and the Arizona Supreme Court’s amendments to Criminal Rule 18.4, the SJSW recommends a comment that reinforces the policy behind prohibiting peremptory strikes that reads, “to the greatest degree possible the role of improper bias in selecting jurors to ensure verdicts are rendered fairly and impartially. Judges, lawyers, and jurors all carry unique perspectives and views, which in prospective jurors can rise to the level of improper bias justifying their excusal for cause.” The SJSW further recommends citing the guiding principles in Arizona Code of Judicial Conduct 2.3(B) and (C), to outline improper bases for challenging a juror.

In part, due to its proposed comment to Criminal Rule 18.4(b), the SJSW recommends removing as not current nor accurate the 1973 Comment to Criminal Rule 18.4(b). That Comment includes a list of for-cause grounds to challenge a prospective juror. The SJSW concluded that an extensive list was unnecessary given the guidance it provided in its proposed comments to Civil Rules 47(d)(3) and 47(c)(5) and Criminal Rules 18.4(b) and 18.5(f). Additionally, there was concern that the

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<sup>21</sup> See Cal. Civ. Proc. § 222.5; N.H. Rev. Stat. § 500-A:12-a.

terminology in the 1973 comment was out of date, the grounds did not precisely match the statutory basis for challenges, and a similar comment was not included in the civil rules. If the Arizona Supreme Court prefers retaining the Comment, the SJSW recommends that the comment be updated, and that a similar Comment be added to the civil rules.

Of note, Civil Rule 47(d) lists various grounds for challenging a juror, which are not listed in the criminal rules. The SJSW considered and rejected striking the grounds listed in Civil Rule 47(d) to match the criminal rules because the civil rule is primarily illustrative and does not limit the parties' ability to appropriately challenge prospective jurors.

The SJSW also considered and rejected two additional alterations to the burden of proof. Some members expressed concerns that the "[c]hallenge for cause" standard in Criminal Rule 18.4(b) might conflict with the preponderance standard adopted the Arizona Supreme Court in existing Criminal Rule 18.5(f). The SJSW ultimately concluded that the standard in Criminal Rule 18.4(b) is consistent with existing Criminal Rule 18.5(f) and that parties must establish for-cause challenges by a preponderance of the evidence that a prospective juror cannot render a fair and impartial verdict.

Next, the SJSW also considered and rejected expanding the for-cause standard in both the civil and criminal rules to authorize challenges to "maintain[] public confidence in the administration of justice."<sup>22</sup> This proposal was taken from a recent judicial decision in Canada, which made a similar change when it removed peremptory challenges. The SJSW determined that Arizona's existing burden of proof sufficiently embodied this concept, and the language of the Canadian rule was too indefinite to allow consist application.

### *n.1995 Comments to Civil Rule 47(a) & (e), and Criminal Rule 18.5(b).*

The 1995 comment to Civil Rules 47(a) & (e), and Criminal Rules 18.5(b) authorizes both the traditional "strike-and-replace" and "struck" methods of jury selection. The comment specified under either method, and following challenges, "the clerk calls the first 8 or 12 names, as the law may require, from those remaining on the list, plus the number of alternate jurors thought necessary by the judge who become the trial jury." The SJSW concluded that courts should have flexibility to either call replacement jurors sequentially as the comment currently requires, or randomly. A random replacement would disincentivize the parties from improperly attempting to strike a prospective juror currently in the box, for the next sequential, and possibly more favorable, juror on the list.

The proposed comment provides that "the rules do not prescribe a method for replacing an excused prospective juror in the juror jury box with a member of the panel, deferring to the discretion of the court on the appropriate method."

### *B. Civil Justice Court Rules and Eviction Action Rules*

The SJSW's proposed amendments to the Justice Court Civil Rules and Eviction Action Rules are purposefully more limited than are the proposed amendments to the civil and criminal rules. Both the existing Civil Justice Court and Eviction Action Rules provide less detail than the civil and criminal

<sup>22</sup> *R. v. Chouhan*, 149 O.R. 3d 365, ¶ 28 (Ontario Ct. App. 2020), *reversed by R. v. Couhan*, 2020 S.C.J. 101 (2020).

rules. Incorporating matching amendments would require substantial amendments to Civil Justice Court Rule 134 and Eviction Action Rule 12. The SJSW concluded that those changes were presently unnecessary.

Further reinforcing the SJSW's logic in limiting its proposal, jury trials in justice court currently average three days or less. Justice Court judges and staff expressed concern that extensive use of case-specific written questionnaires could lengthen jury trials to four days. That concern is relevant because the Task Force recommended reducing the minimum days of jury service from six to four days before jurors become eligible for compensation from the Arizona Lengthy Trial Fund.<sup>23</sup> If the use of questionnaires extended justice court trials to four days, and the Court sought and achieved the legislative change to the Lengthy Trial Fund, that change would increase the number of justice court trials that trigger Lengthy Trial Fund reimbursement. Regardless of the merits of that outcome, the Task Force did not anticipate it when the Task Force's made its recommendation for changes to the Lengthy Trial Fund.<sup>24</sup>

As a result, the SJSW recommends minimal amendments to Civil Justice Court Rule 134(a)(1) and Eviction Action Rule 12(a) that accomplish the following: (1) expressly authorizing case-specific written questionnaires; (2) ensuring any case-specific written questionnaires comply with the confidentiality and document retention provisions in proposed Civil Rule 47(c)(3); and (3) expressly adding the preponderance of the evidence standard to establish a for-cause challenge.

### C. Statutory Amendments

While reviewing rules, the SJSW identified two statutes that authorize peremptory challenges. Arizona Revised Statute § 22–223(B) authorizes peremptory challenges in Justice Court civil trials. To avoid an irreconcilable conflict between A.R.S. § 22–223(B) and JCRCP 134, the SJSW recommends that AOC pursue a legislative change to remove peremptory challenges from A.R.S. § 22–223(B). The proposed statutory change is included Appendix 1E to this Report.

Second, the court martial statutes for the Arizona National Guard authorize peremptory challenges in A.R.S. § 26–1041(B). Because these case types appear outside the jurisdiction of the judiciary, the SJSW does not have any recommended changes for this statute.



## II. Proposed Revisions to Bench Book Scripts and Recommended General Civil and Criminal Case-Specific Questionnaire Templates

The United States and the Arizona constitutions guarantee the right to a fair and impartial jury.<sup>25</sup> Voir dire is a tool used by courts across the country to evaluate whether prospective jurors are willing and able to impartially evaluate the evidence and testimony, free from bias.

<sup>23</sup> Task Force Report and Recommendations, *supra*, at 31.

<sup>24</sup> *Id.* at 31–32 (discussing Lengthy Trial Fund budgeting).

<sup>25</sup> See U.S. CONST. amend. VI, VII, XIV; ARIZ. CONST. art. 2 § 13 & 24; *Witherspoon v. Illinois*, 391 U.S. 510, 518 (1968); *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975).

During voir dire, judges, lawyers, and parties ask prospective jurors questions, hoping to expose any potential bias. Armed with this information, the court and parties can discuss whether a prospective juror should become a trial juror or whether the individual should be removed from the venire for cause.

The jury selection process typically involves bringing a group of prospective jurors into the courtroom. After administering an oath, the judge asks the prospective jurors a series of questions. Often, Arizona judges rely on voir dire scripts maintained in the Bench Books made available to Arizona judges through Wendell.

During voir dire, jurors are typically allowed to speak when recognized by the court. After the judge is finished asking questions, the lawyers or the parties are usually permitted to question individual jurors or ask questions of the entire panel.

Unfortunately, the solemnity and formality of the jury selection process can deter prospective jurors from disclosing and discussing attitudes, feelings, beliefs, opinions and life experiences.<sup>26</sup> Moreover, jury selection often involves questioning prospective jurors in groups, which often leads to less disclosure and greater conformity in the opinions and behaviors expressed in a group setting.<sup>27</sup>

The SJSW spent considerable time conducting research and working with experts to identify the most effective way to probe potential sources of bias rather than simply relying on a prospective juror's ability to self-identify any views that might compromise their objectivity. The SJSW attempted to develop best practices to encourage judges to determine the ultimate question of impartiality, rather than deferring to a juror's self-assessment of impartiality.<sup>28</sup>

The SJSW sets forth best practices in this Report. The best practices identified in this Report are also memorialized in revised voir dire scripts that are attachments to this Report. *See* Appendix 2A (Criminal Voir Dire) and Appendix 2B (Civil Voir Dire). The best practices include:

- Using pretrial written and online case-specific questionnaires when feasible.

<sup>26</sup> Frederick, J., *Mastering Voir Dire and Jury Selection: Gain an Edge in Questioning and Selecting Your Jury* (4th ed. 2018); Mize, G., *Be Cautious of the Quiet Ones*, 10 VOIR DIRE 8 (2003); Seltzer, R., Venuti, M., & Lopes, G., *Juror Honesty During the Voir Dire*, 19 J. CRIM. JUST. 451 (1991); Flores, D. *Methods of Expanded Voir Dire and Written Questionnaires: Experimental Results on Jury Self Disclosure and Implications for Trial Practice*, CT. CALI. 1 (Summer 2011); Marshall, L. & Smith, A., *The Effects of Demand Characteristics, Evaluation Anxiety, and Expectancy on Juror Honesty During Voir Dire*, 120 J. PSYCHOL. 205 (1986); Suggs D. & Sales, B., *Juror Self-Disclosure in Voir Dire: A Social Science Analysis*, 56 IND. L.J. 245 (1981).

<sup>27</sup> *See* Nietzelt, M. & Dillehay, R., *The Effects of Variations in Voir Dire Procedures in Capital Murder Trials*, 6 LAW & HUM. BEHAV. 1 (1982); Nietzelt, M. & Dillehay, R., *Effects of Voir Dire Variations in Capital Murder Trials: A Replication and Extension*, 5 BEHAV. SCI. & L. 467 (1987).

<sup>28</sup> Judges will also reflect upon arguments made by counsel and the parties. However, ultimately, the “decision as to whether a juror can render a fair and impartial verdict is for the trial court.” *State v. Chaney*, 141 Ariz. 295, 303 (1984) (citing *State v. Rose*, 121 Ariz. 131, 139 (1978)); *State v. Lavers*, 168 Ariz. 376, 390. *State v. Ellison*, 213 Ariz. 116, 137 ¶ 89 (2006) (“Even if a juror is sincere in his promises to uphold the law, a judge may still reasonably find a juror’s equivocation ‘about whether he would take his personal biases into the jury room’ sufficient to substantially impair his duties as a juror, allowing a strike for cause.”) (quoting *State v. Glassel*, 211 Ariz. 33, 48 ¶ 49 (2005)).



- Employing written or online case-specific questionnaires to obtain answers to questions that may be more sensitive or private, such as information the juror may know about the case, a juror's opinions or attitudes regarding relevant issues, and prior pertinent life experiences.
- Drafting questionnaires to include a blend of open-ended and close-ended questions.
- Limiting questionnaires to less than 60 questions.
- Providing parties with sufficient time to review the jurors' responses.
- Supplementing written voir dire with oral voir dire.
- Asking questions during oral voir that avoid leading a juror into a socially appropriate answer.
- Providing the jurors with information and instruction on the importance of disclosing and discussing attitudes, beliefs, opinions, and life experiences that may affect a juror's ability to be fair and impartial.
- Permitting questioning by the parties.
- Avoiding attempts by the judge to rehabilitate a prospective juror through leading questions.

*1. Using pretrial written and online case-specific questionnaires when feasible to obtain answers to questions that may be sensitive or private.*

Research indicates that juror questionnaires, including electronically administered questionnaires, increase prospective jurors' willingness to provide complete and candid answers to questions.<sup>29</sup> The use of written and online questionnaires provide prospective jurors with a greater sense of privacy and comfort than answering questions in open court.<sup>30</sup> During jury selection, the court and parties are asking jurors to self-identify bias and disclose it publicly. A juror may be less willing to discuss opinions, attitudes, and relevant personal life experiences, particularly when asked to discuss topics such as substance abuse, mental health, prior experiences as the victim of a crime, interactions with law enforcement, and relevant attitudes regarding race and ethnicity. The trial court should also use written and online questionnaires when asking jurors for information that could prejudice the entire panel. For example, a prospective juror could answer a question regarding familiarity with the case by disclosing that they read that the defendant had prior felony convictions or was reported to have confessed to the crime.

Jury questionnaires can also be used to add efficiency to the jury selection process.<sup>31</sup> Information learned from written or online questionnaires can serve as a springboard for follow-up questions by the court or parties to further assess whether the prospective juror can discharge the responsibility of a juror in a manner that is fair and impartial.

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<sup>29</sup> Frederick, J., *Mastering Voir Dire and Jury Selection: Gain an Edge in Questioning and Selecting Your Jury* (4th ed. 2018) (herein "Frederick").

<sup>30</sup> Frederick, *supra* note 29; Linda L. Marshall & Althea Smith, *The Effects of Demand Characteristic, Evaluation, Anxiety, and Expectancy on Jury Honesty During Voir Dire*, 120 J. PSYCHOL. 205 (1986); *see generally* Alan Chaikin & Valerian Derlega, *Self-Disclosure*, in CONTEMPORARY TOPICS IN SOCIAL PSYCHOLOGY (Thibaut & Carson eds. 1976). .

<sup>31</sup> Frederick, *supra*.

The SJSW understands that preparing and administering a pretrial questionnaire, especially from scratch, can be time consuming and inefficient. To ease their use, the SJSW prepared template questionnaires for criminal and civil cases. *See* Appendix 3A (Criminal General Long); Appendix 3B (Criminal General Short); Appendix 3C (Civil General Long).

2. *Restricting questionnaires to less than 60 questions and including a blend of open-ended and close-ended questions.*

The SJSW recommends using a combination of open- and closed-ended questions. The SJSW also recommends using multiple choice questions and questions calling for a narrative response. Each type of question has advantages and disadvantages. For example, open-ended questions may uncover unique opinions and attitudes of prospective jurors rather than directing a prospective juror to select from a predetermined list of options. Moreover, narrative answers may assist the court and parties formulate meaningful follow-up questions to ask during oral voir dire. However, questions seeking a narrative answer can overwhelm a prospective juror and the juror could decide to answer “not applicable” rather than provide a substantive and thorough narrative response. Closed-ended questions are much easier for jurors to answer and permit the questionnaire to be completed in a shorter timeframe. Asking closed-ended questions can minimize the possibility of questionnaire fatigue.

Judges are also encouraged to reduce the number of questions in a written or online questionnaire to less than 60, which includes any subparts to questions. The court should attempt to avoid re-asking the same questions in oral voir dire that were presented to the juror in written or online questionnaires. Questions should also be worded simply, and compound questions should be avoided.

3. *Providing parties with sufficient time to review the jurors’ responses.*

Regardless of the method of distributing a case-specific questionnaire, the parties and court need sufficient time to review the jurors’ responses. Because online questionnaires are a relatively new concept for courts, the SJSW worked independently and with court personnel to develop tools for courts and parties to quickly review and digest juror responses to online questionnaires.

There are two basic methods of using case-specific juror questionnaires, whether using paper or electronic platforms. The first method involves obtaining information requested from prospective jurors before the jurors appear at the courthouse for jury service. The court, clerk, or jury commissioner or administrator will send a questionnaire to prospective jurors or include a QR Code or .url on the summons, directing the prospective juror to the online questionnaire. If courts use online questionnaires, prospective jurors should be given the option of requesting a paper copy of the questionnaire or completing the questionnaire on the day of jury selection. If a court uses paper questionnaires, the court should mail the questionnaires to prospective jurors together with a return envelope bearing sufficient prepaid postage for the prospective juror to mail the questionnaire back to the court. If a questionnaire is provided to prospective jurors before they arrive at the courthouse, the questionnaire should include instructions on how the prospective juror should complete and return the questionnaire and provide specific instructions regarding when the questionnaire should be returned. The instructions should also inform the prospective jurors they should not receive input on answering

the questions. This is particularly important in high profile cases or controversial cases where the pressures for interference may be elevated. After returned, the paper questionnaires are copied or scanned and distributed to the parties. The completed questionnaires should also become part of the case file with any juror identifying information sealed and protected. For online questionnaires, the responses can be digitally converted to excel spreadsheets and emailed or distributed to the parties. Thereafter, the court and parties discuss potential cause challenges on the record and release jurors who do not need to report to the courthouse. The jury commissioner or administrator, clerk, or other designated court personnel contact prospective jurors who have been released by the court and the prospective jurors are informed they are not required to report to a court facility for jury service.

The second method of using a case-specific questionnaire occurs after the prospective jurors appear in-person for jury service. This option may be necessary for certain courts who summon by trial day rather than summon for individual or specific trials. In this approach, prospective jurors complete a written or online questionnaire after arriving at the courthouse. If using an online questionnaire, courts should have iPads, tablets, or computers available for any prospective juror who does not have a smartphone or is unable to respond to the questionnaire using a personal device. If the court uses paper questionnaires, the prospective jurors complete the questionnaires and provide the written responses to court personnel. The written questionnaires are then copied and distributed to the parties and lawyers. Collating, copying, and reviewing written questionnaire can be a time-consuming process. Therefore, the SJSW encourages the use of online questionnaires if prospective jurors are being asked to complete a case-specific questionnaire on the date of trial.

Members of the SJSW worked with technology experts, including experts in the AOC to develop an online questionnaire that can be used and shared among all Arizona courts. By using online questionnaires, the SJSW anticipates courts can reduce costs associated with distributing case-specific questionnaires to prospective jurors. The SJSW also believes the use of online questionnaires will decrease the number of jurors who report unnecessarily for juror service.

Technology experts at AOC anticipate a phased approach to making the online questionnaire available statewide. The initial phase will allow courts to view and access potential online questionnaires for distribution to prospective jurors. Phase 1 will also allow courts to create online questionnaires and convert the responses into excel spreadsheets for distribution to the parties and lawyers. Phase 2 will focus on additional features to assist courts in analyzing and viewing the jurors' responses to online questionnaires and allow courts across the state to share digital questionnaires. The SJSW prepared three online questionnaires for courts to view and consider using. *See* Appendix 4A (Criminal General Long); Appendix 4B (Criminal General Short); Appendix 4C (Civil General Long). These can be used as the first online questionnaire templates available statewide through the first phase of any online questionnaire tool the AOC may develop for use by local courts.

4. *Supplementing written voir dire with oral voir dire that avoids leading jurors to respond with socially appropriate answers, permits questioning by the parties, and minimizes attempts by the judge to rehabilitate prospective jurors.*



Importantly, the SJSW recommends the use of questionnaires when feasible to supplement, not replace, oral voir dire. Although judges, lawyers and parties should be encouraged to ask prospective jurors follow-up questions to the answers provided in written or online questionnaires, judges are advised to delete questions in the oral voir dire script that were asked in the written or online questionnaires.

After working with experts, the SJSW recommends that judges attempt to limit the number of leading questions asked during oral voir dire. The SJSW recommends that judges and parties ask jurors questions in an effort to encourage prospective jurors to reflect upon their attitudes, opinions, feelings, and life experiences. Research suggest that helping prospective jurors identify potential bias may be necessary for a juror to reduce the impact of their predispositions.<sup>32</sup> To minimize the impact of potential bias, a prospective juror must be aware of the potential bias and be motivated to adjust their decision-making process. However, merely bringing potential bias to a juror's attention and asking the juror to commit to set the bias aside will likely fail to transform a biased juror into an unbiased one.<sup>33</sup>

The best practices offered by the SJSW and which are set forth in the draft voir dire scripts discourage judicial attempts to rehabilitate jurors. *See* Appendix 2A (Criminal Voir Dire) and Appendix 2B (Civil Voir Dire). In addition, questions should be worded to avoid leading the juror to the socially acceptable answer. For example, judges should avoid asking questions like, "You agree to follow the law, right?" or "You agree to set that life experience aside and serve as a fair and impartial juror in this case, don't you?"



### III. Recommendations for Statewide Training Program

This section of the report presents thoughts and a framework for statewide training in relation to the Arizona Supreme Court's decision to abolish peremptory challenges and the recommendations herein that courts use case-specific questionnaires more broadly while also adopting more robust voir dire practices.

#### A. *Training Should Focus on Overview of the Change in Philosophy Represented by the New Rules – Toward Neutralism and Away from Seeking Advantage Through Voir Dire – to Help Participants Understand Why They Are Doing What They Are Doing.*

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<sup>32</sup> Salerno, J., et al., *supra*; Devine, P.G. Forscher, P.S., Austin A.J. & Cox, W.T. (2012), *Long-term reduction in implicit race bias: A prejudice habit and ways to increase consistency*, JOURNAL OF EXPERIMENTAL SOCIAL PSYCHOLOGY, 48(6), 1267-1278. <http://doi.org/10.1016/j.jesp.2012.06.003>.

<sup>33</sup> Salerno, J., et al., *supra*; Devine, P.G. Forscher, P.S., Austin A.J. & Cox, W.T. (2012), *Long-term reduction in implicit race bias: A prejudice habit and ways to increase consistency*, JOURNAL OF EXPERIMENTAL SOCIAL PSYCHOLOGY, 48(6), 1267-1278. <http://doi.org/10.1016/j.jesp.2012.06.003>; Gawronski, B., Hoffman, W., & Wilbur, C.J. (2006), *Are "Implicit" Attitudes Unconscious?* CONSCIOUS AND COGNITION, 15(3), 485-99, <https://doi.org/10.1016/j.concog.2005.11.007>; Axt, J.R., Nguyen, H., & Nosek, B.A. (2018), *The Judgment Bias Task: A Flexible Method for Assessing Individual Differences in Social Judgment Biases*, JOURNAL OF EXPERIMENTAL SOCIAL PSYCHOLOGY, 76, 337-55, <http://doi.org/10.1016/j.jesp.2018.02.011>.

This recommendation begins with the premise that people carry out learning better if they are not following process-based instructions in a rote way, but they instead understand reasons and purposes behind what they do. The SJSW therefore recommends that training include some general, noncontentious overview of the purpose of the changes.

The elimination of peremptory challenges, as a matter of process, falls symmetrically on prosecution and defense; on plaintiff and on defendant. All are barred from peremptory challenges. That change unmistakably signals a move away from each side having a chance to pick the jury that is best for their case, as peremptory challenges allowed each side to do through generally unreviewable strikes to veto those jurors thought most favorable for the other side.<sup>34</sup>

Whether unwelcome or not to particular lawyers, the current reform is straightforward. Like in 1993 when Arizona instituted mandatory, early-case disclosure of all relevant materials (both favorable and unfavorable) in civil matters under Rule of Civil Procedure 26.1, the Arizona Supreme Court has adopted a first-in-the-nation reform that eliminates a traditional tool of adversarial justice, thus substituting a more neutral pursuit of truth. This is an important concept to explain to the bench and bar and will assist in promoting understanding of and respect for the rule change.

This bedrock policy of neutrality is grounded in other provisions of law that merit mention. First, it is consistent with general notions of due process grounded in fundamental fairness. Second, it is consistent with Arizona Code of Judicial Conduct 2.3(C), which provides that “A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice... based on attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation....” By eliminating peremptory challenges, the Supreme Court has made it much harder to use cultural markers as indications of sympathy for the government or corporations on one hand, or defendants or civil plaintiffs on the other hand, and that is roughly consistent with the content of 2.3(C). Third, to the extent the current rule changes are accompanied by any Comment explaining their purpose of rooting out bias, any such Comment should be discussed in any training.

*B. Training Should Help Judges and Lawyers Understand the Functions of Case-Specific Juror Questionnaires and Open-Ended Questioning, the Need to Avoid Rote Rehabilitations and Unnecessary Yes/No Questions and Should Include Hands-On Exercises Led By Judges or Consultants to Help Judges Lead the New Voir Dire.*

*1. Training Should Help Judges and Lawyers Understand the Function and Use of Case-Specific Juror Questionnaires.*

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<sup>34</sup> See, e.g., “How Lawyers Pick Jurors, and Why It Matters,” Eglet Adams Law Firm Blog (“When the plaintiff picks jurors, they’re looking for those who are very sympathetic, who are willing to view the prosecution as the victim in the case.... The defense, on the other hand, wants the exact opposite. They’re looking for jurors who will be predisposed against the prosecution.”) <https://www.egletlaw.com/how-lawyers-pick-jurors-and-why-it-matters/> (June 28, 2018) (last visited October 3, 2021).

The Task Force and SJSW recommend using case-specific questionnaires to elicit information about prospective jurors, to allow more rapid exclusion of prospective jurors who should not serve for easily identifiable reasons, and to focus voir dire more quickly. For this reason, training on the new changes should include a component concerning the various uses of written or online case-specific questionnaires, and the different ways in which they are used presently.

The training should also include template questionnaires such as those drafted and recommended for adoption by the SJSW. Moreover, letting judges know these templates are at their disposal will allay concerns about the burdens of creating case-specific questionnaires and in turn allow training attendees to focus more on the how and why of case-specific questionnaire use. Additional discussion of the procedures and potential advantages of using case-specific questionnaires, resources for formalizing them, and the two ways of deploying them (paper or online), will allow counties that summon jury pools by case to consider the best way to utilize the questionnaires.

2. *One of the Keys to Training Is to Communicate the Importance of Open-Ended Questioning, and to Impart Expertise in How to Conduct Open-Ended Questioning That Can Allow Examination of Bias and Striking For Cause, Where Appropriate, Biased Prospective Jurors.*

The SJSW recommends a program of education on the need for open-ended questioning without rote, conclusory rehabilitation of potentially biased jurors. Research by Professor Jessica Salerno at Arizona State University confirms the importance and utility of open-ended questioning in voir dire, and the harm of such rote rehabilitation.<sup>35</sup> In a series of mock jury studies, Professor Salerno confirmed the hypothesis that “extended (versus minimal) voir dire questions” were “better able to identify mock jurors who hold extreme attitudes that could threaten their impartiality or willingness to follow the law” and “that these excludable jurors would render different judgments.”<sup>36</sup> Of particular note, Professor Salerno found that traditional, conclusory, closed-ended questioning (substantially, asking prospective jurors ‘Can you follow the law and render an impartial decision’) resulted in elimination of less than 2% of prospective jurors for bias, whereas extended questioning identified disabling bias in 42% of prospective jurors.<sup>37</sup> Also notably, Professor Salerno concluded that not only is judicial rehabilitation (e.g., “but you can set aside any biases you may have, correct?”) ineffective in eliminating bias, but that mock jurors who have been judicially rehabilitated incorrectly report “the illusion that they were putting their biases aside when the impact of those biases remained undiminished.”<sup>38</sup>

Training should include explanation of these findings, again, to help participants in the new voir dire process understand and support the necessity of the process, and to understand the problems in the old process the new rules ask both judges and lawyers to avoid.

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<sup>35</sup> See Salerno, et. al., *supra*.

<sup>36</sup> *Id.* 349.

<sup>37</sup> See *id.* at 348.

<sup>38</sup> See *id.* at 349.

### 3. *Hands-On, How-To Trainings in Open-Ended Voir Dire to Empower Judges and Lawyers to Participate in the New Voir Dire Process Effectively.*

The SJSW strongly recommends a program of participatory, hands-on training on how to conduct voir dire using open-ended questions, avoiding rote rehabilitations, and utilizing case-specific questionnaires where possible, and use of mini-openings where case-specific questionnaires are not practical. While it is important to show everyone the compelling research of Professor Salerno and her colleagues, it is not abstract agreement but facility with putting it into effect that matters, and that will make the rule changes function well. Simply put, Professor Salerno’s research validates the practical improvements suggested within the proposed rule changes. This is also consistent with the Arizona Supreme Court’s approach to major reforms, as most recently, the Court implemented tiered civil discovery in July 2018 to allow an extended period of training first, to permit the courts and counsel to understand and put into effect properly those significant changes.

A training course could be developed and implemented to audiences in each county, or in groups of counties where appropriate (e.g., combining trainings in Yuma and La Paz Counties, for example), to reduce the number of trainings necessary. The training should include components of explanation of open-ended questioning, watching videos of effective open-ended questioning, and specifically how to pivot in those exchanges to asking in a disarming fashion about the degree of commitment to beliefs or attitudes that suggest bias. Ultimately, it should include a component where judges in rotations conducting voir dire can participate in questioning with other trained judges, consultants, or other persons of assistance as the Court may choose.

### 4. *Judges and Lawyers Should be Trained on Implicit Bias, and on the Identification and Appearance of Particular Biases to Aid Judges in Approaching It.*

To allow judges and lawyers to conduct voir dire in a manner that roots out and eliminates bias, they should be trained about implicit bias, to understand it in prospective jurors and also fellow judges and lawyers, and ultimately, ourselves. The Task Force has already determined in its Report and Recommendations to recommend “[t]raining for judicial officers and attorneys around implicit bias and its impact on jury selection.”<sup>39</sup>

But understanding that open-ended questions are effective is not the same as being able to put that knowledge into practice. Thus, just as the SJSW recommends hands-on training for participation in open-ended questioning in voir dire, it likewise recommends training on how juror statements may or may not reflect incipient biases, so they can be the subject of follow-up questioning. To that end, it is recommended that training about implicit bias include instances of how lawyer questions and juror answers can encode implicit biases concerning law enforcement, racial groups, or other social groups, including those protected under Code of Judicial Conduct 2.3(C). Training should help judges and lawyers to recognize signs of such bias, along with how to approach questioning to elicit the honest, open statements of attitudes not as easily expressed in the current system. It is important to engage the jurors extendedly, and to tease out value statements, beliefs, and other statements indicating

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<sup>39</sup> Task Force Report and Recommendations, *supra*, at 11.

predisposition. Professor Salerno’s research suggests that this type of extended voir dire will likely lead to an increased number of for-cause disqualifications. However, a voir dire process which induces more honest answers can only aid the process of selecting fair and impartial juries.

5. *The Criminal and Civil Sections of the State Bar Should Organize Trainings on the New Rules, Dovetailing with the Judicial Trainings, and Working With Stakeholders in the State Bar.*

While judicial training is of great importance, so much of voir dire depends on lawyers, and it will be important to have a robust program of lawyer-focused training. It will be useful for the lawyer training to reflect an awareness of the content of the judicial training, as the lawyer’s role should be described consistently in both. Judges will retain the authority to take a more leading role in voir dire, or to defer more of the questioning to lawyers, and lawyers need to be conscious of how either of those two different approaches may play out under the new rules. The State Bar can organize and facilitate trainings once the judiciary is clear in how it wishes to proceed and then can work within the framework of the criminal and civil practice sections to do so. On the criminal side, the State Bar can involve prosecution and defense stakeholder groups such as the Arizona Prosecuting Attorneys’ Advisory Council and the Arizona Attorneys for Criminal Justice to organize, participate in, publicize, and as appropriate, lead these trainings. On the civil side similarly, groups like the Arizona Association of Defense Counsel and the Arizona Association for Justice, among others, can perform like roles and functions.

6. *Prospective Jurors Should Likewise Be Provided Information Consistent with the Training of Judges and Lawyers, to Help Them Participate Most Helpfully in the New Voir Dire Environment.*

A court’s communications with prospective jurors should be consistent with communications with judges and lawyers. The Task Force’s October 4 report recommended updates to “the statewide video used during jury orientation to remind jurors of the importance of jury service and to help explain the jury selection process”.<sup>40</sup> Additionally, the SJSW recommends that the video be updated to make it congruent with the move toward open-ended voir dire by explaining that everyone has implicit biases, normalizing the concept of bias to make it non-threatening in voir dire, and emphasizing the importance of candor and openness to making the process work well. These changes would make voir dire congruent with Professor Salerno’s research, referenced not only in this memorandum, but also in the draft Comment to the revised Arizona Rules of Criminal and Civil Procedure that provide guidance to the Superior Court about the conduct of voir dire.<sup>41</sup>

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<sup>40</sup> See *id.* at 4.

<sup>41</sup> See Appendices 1A and 1B herein.

## Appendix 1A: Proposed Amendments to the Arizona Rules of Civil Procedure

### Rule 16. Scheduling and Management of Actions

(a) – (c) [No Change.].

**(d) Scheduling Conferences.** On a party's written request the court must—or on its own the court may—set a Scheduling Conference. At any Scheduling Conference under this Rule 16(d), the court may:

(1) – (18) [No Change.]

~~(19) discuss any time limits on trial proceedings, juror notebooks, brief pre-voir dire opening statements, and preliminary jury instructions, and the effective management of documents and exhibits;~~

~~(20)~~(19) determine how a verbatim record of future proceedings in the action will be made; and

~~(21)~~(20) discuss other matters and enter other orders that the court deems appropriate.

**(e) Trial-Setting Conference.**

(1) *Generally.* [No Change.]

(2) *Subject Matter.* In addition to setting a trial date, the court may discuss at the Trial-Setting Conference:

(A) the status of discovery and any dispositive motions that have been or will be filed;

(B) a date for holding a Trial Management Conference under Rule 16(f);

(C) imposing time limits on trial proceedings;

(D) ~~using juror questionnaires~~ the areas of inquiry and specific questions to be asked by the court and the parties during voir dire, including any limitations on written or oral examination and whether to permit the parties to give brief pre-voir dire opening statements;

(E) using juror notebooks;

(F) giving ~~brief pre-voir dire opening statements and~~ preliminary jury instructions;

(G) effective management of documents and exhibits; and

(H) other matters that the court deems appropriate.

**(f) Joint Pretrial Statement; Trial Management Conference.**

(1) – (3) [No Change.]

(4) *Additional Documents to File if Trial Is to a Jury.* If the trial is to a jury, the parties must--on the same day they file the Joint Pretrial Statement--file:

(A) an agreed-on set of jury instructions, verdict forms, questions for a case-specific written questionnaire, and questions for oral voir dire questions; and

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(B) any additional jury instructions, verdict forms, questions for a case-specific written questionnaire, and questions for oral voir dire ~~questions~~, but not agreed on.

(5) – (8) [No Change.]

(g) – (j) [No Change.]

### COMMENTS

[No Change.]



## **Rule 47. Jury Selection; Juror Information; Voir Dire; Challenges**

### **(a) Jury Selection.** [No Change.]

### **(b) Juror Information.**

(1) *Personal Information.* Before jury selection and oral voir dire examination starts, ~~the clerk must provide~~ the parties must be provided with the following information for each prospective juror: name, zip code, employment status, occupation, employer, residency status, education level, prior jury experience, and felony conviction status. ~~The clerk must keep all prospective jurors' home and business telephone numbers and addresses confidential and may not disclose them unless good cause is shown.~~

(2) Confidentiality of Eligibility and Biographical Information. The clerk must obtain and maintain juror information in a manner and form approved by the Supreme Court, and this information may only be used for the purpose of jury selection. All jurors' home and business telephone numbers and addresses are confidential and may not be disclosed unless good cause is shown.

~~(2)(3) Confidentiality of Case-Specific Written Questionnaires.~~ If the ~~The~~ court ~~may order~~ requires prospective jurors to complete a case-specific written questionnaire, it must maintain any completed case-specific written questionnaires in a manner and form approved by the court as part of the case file prepared by the parties and submitted to the court for approval before trial. Before conducting oral voir dire, ~~Unless the court orders otherwise, the clerk must provide the prospective jurors' responses to the case-specific written questionnaires must be provided to each party. copies of any such juror questionnaire and answers to the parties and their respective counsel.~~ Any party or counsel receiving a copy of the responses to the case-specific written questionnaires ~~questionnaire must keep the information strictly confidential and must not disclose the information to the public and may disclose the information only to the extent necessary for the proper conduct of the case.~~ When jury selection is ~~done~~ completed, each recipient must destroy or return to the court all copies of the ~~juror responses to the case-specific written questionnaires and answers to the clerk.~~

### **(c) Voir Dire Oath and Procedure.**

(1) *Voir Dire Affirmation and Oath.* Each prospective juror must swear or affirm that the answers provided in response to the case-specific written questionnaires are truthful. Before oral voir dire, ~~The each~~ prospective jurors must take an oath administered by the clerk ~~before they are examined about their qualifications.~~ The oath's substance must be as follows: "You do solemnly swear (or affirm) that you will truthfully answer all questions about your qualifications to serve as a trial juror in this action, so help you God." If a prospective juror elects to affirm rather than swear the oath, the clause "so help you God" must be omitted.

(2) Explanation of Voir Dire. At the beginning of any written or oral examination, the court must explain the purpose of voir dire, how the court and the parties will use the prospective jurors' information, and who may have access to the information prospective jurors provide.

(3) Case-Specific Written Questionnaires. Unless the court orders otherwise, the court should require each prospective juror to complete a case-specific written questionnaire in a manner and form approved by the court. The case-specific written questionnaire should include questions about the prospective juror's qualifications to serve in the case, any hardships that would prevent the prospective juror from serving, and whether the prospective juror could render a fair and impartial verdict.



~~(2)~~(4) *Brief Opening Statements.* Before oral voir dire begins, the court may allow or require the parties to present brief opening statements to the prospective jurors.

~~(3)~~(5) *Extent of Oral Voir Dire.*

(A) Questioning by Court and Parties. The court must conduct voir dire orally. During oral examination, ~~The~~ the court must thoroughly question the jury panel to ensure that prospective jurors are qualified, fair, and impartial. The court must permit each of the parties to ask the panel additional questions, but may impose reasonable limits on the questioning. Written questions also may be used as provided in Rule 47(b)(2). A party's failure to submit questions to the court prior to examination should not be grounds to deny a party the opportunity to conduct an oral examination.

(B) Extent of Questioning. Voir dire questioning of a jury panel is not limited to the grounds listed in Rule 47(d) and may include questions about any subject that might disclose a basis for the exercise of ~~for cause a peremptory~~ a challenge for cause.

**(d) Challenges for Cause.**

(1) – (2) [No Change.]

(3) *Burden of Proof.* The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict.

**~~(e) Peremptory Challenges.~~**

~~(1) *Procedure.* When the voir dire is finished and the court has ruled on all challenges for cause, the clerk will give the parties a list of the remaining prospective jurors for the exercise of peremptory challenges. The parties must exercise their challenges by alternate strikes, beginning with the plaintiff, until each party's peremptory challenges are exhausted or waived. If a party fails to exercise a peremptory challenge, it waives any remaining challenges, but it does not affect the right of other parties to exercise their remaining challenges.~~

~~(2) *Number.* Each side is entitled to 4 peremptory challenges. For this rule's purposes, each action—whether a single action or two or more actions consolidated for trial—must be treated as having only two sides. If it appears that two or more parties on a side have adverse or hostile interests, the court may allow them to have additional peremptory challenges, but each side must have an equal number of peremptory challenges. If the parties on a side are unable to agree on how to allocate peremptory challenges among them, the court must determine the allocation.~~

**~~(f)~~ (e) Alternate Jurors.**

(1) *Generally.* The court may order that up to 6 additional jurors be called and impaneled in the same manner as other jurors under this rule, to allow the court to later designate some of the jurors as alternates.

(2) *Instructions.* The court should explain to the jury why alternate jurors are needed and how they will be selected at the end of trial.

(3) *Selecting and Excusing an Alternate Juror.* The court will determine the identities of the alternate jurors by a drawing held in open court after closing arguments and final jury instructions are given but before deliberations begin. If an alternate juror is excused, the court must instruct him or her to continue

to observe the juror admonitions until a verdict is returned or the jury is discharged.

(4) *Substituting an Alternate Juror.* If a deliberating juror is disqualified or unable to perform the required duties, the court may substitute an alternate juror in the juror's place. If an alternate juror joins the deliberations, the court must instruct the jury to start over in its deliberations.

~~(5) *Additional Peremptory Challenges.* In addition to the peremptory challenges otherwise allowed by law, each side is entitled to one peremptory challenge if one or two alternate jurors will be impaneled, two peremptory challenges if 3 or 4 alternate jurors will be impaneled, and 3 peremptory challenges if 5 or 6 alternate jurors will be impaneled.~~

### COMMENTS

#### **2021 Amendment to Rule 47(c)(3)**

To allow the process of challenging jurors for cause to work effectively, Rule 47(c)(3) encourages the use of case-specific written questionnaires during voir dire where feasible, deferring to the court on the method and manner of administration. Courts may use paper or electronic case-specific questionnaires, administer case-specific questionnaires in advance of trial or immediately prior to oral voir dire, or use general or case-specific questions.

#### **2021 Amendment to Rule 47(c)(5)**

When feasible, the court should permit liberal and comprehensive examination by the parties, refrain from imposing inflexible time limits, and use open-ended questions that elicit prospective jurors' views narratively. Use of "[e]xtended voir dire," questioning by the parties, and open-ended questions is intended to elicit more candid answers from prospective jurors and to reduce the parties' reliance on demographic stereotypes that is more likely to arise from the use of "minimal voir dire," questioning solely by the court, and closed-ended questions. See Jessica M. Salerno, et al., *The Impact of Minimal Versus Extended Voir Dire and Judicial Rehabilitation on Mock Jurors' Decisions in Civil Cases*, 45 Law & Hum. Behav. 336 (2021). The court should refrain from attempting to rehabilitate prospective jurors by asking leading, conclusory questions that encourage prospective jurors to affirm that they can set aside their opinions and neutrally apply the law. The court should be particularly sensitive to the prejudice that can arise from voir dire by an unrepresented party.

#### **2021 Comment to Rule 47(d).**

Effective January 1, 2022, peremptory challenges were eliminated in the entire Arizona state court system to reduce, to the greatest degree possible, the role of improper bias in selecting jurors to ensure verdicts are rendered fairly and impartially. Judges, lawyers, and jurors all carry unique perspectives and views, which in prospective jurors can rise to the level of improper bias justifying their excusal for cause. Arizona law bars judges and lawyers from manifesting bias or prejudice while selecting a jury, whether on the basis of race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. Arizona Supreme Court Rule 81, Code of Judicial Conduct, Rule 2.3(B), (C).

### **1995 Amendment to Rule 47(a) and (e)**

#### **[Formerly Rule 47(a)]**

Prior to the 1995 amendment, [Rule 47(a) and (e) (Jury Selection and Peremptory Strikes) (formerly Rule 47(a)(1))] was read to require trial judges to use the traditional “strike and replace” method of jury selection, where only a portion of the jury panel is examined, the remaining jurors being called upon to participate in jury selection only upon excusal for cause of a juror in the initial group. Challenges for cause are heard and decided with the jurors being examined in the box. A juror excused for cause leaves the courtroom in the presence and view of the other panel members, after which the excused juror’s position is filled by a panel member who responds to all previous and future questions of the potential jurors.

The purpose of this amendment is to allow the trial judge to use the “struck” method of selection if the judge chooses. This procedure is thought by some to offer more advantages than the “strike and replace” method. See T. Munsterman, R. Strand and J. Hart, *The Best Method of Selecting Jurors*, *The Judges' Journal* 9 (Summer 1990); A.B.A. *Standards Relating to Juror Use and Management*, Standard 7, at 68-74 (1983); and “The Jury Project,” *Report to the Chief Judge of the State of New York* 58-60 (1984).

The “struck” method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. Although the judge may excuse jurors for cause in the presence of the panel, challenges for cause are usually reserved until the examination of the panel has been completed and a recess taken. ~~Following disposition of the for cause challenges, the juror list is given to counsel for the exercise of their peremptory strikes. When all the peremptory strikes have been taken, and all legal issues arising therefrom have been resolved, the clerk calls the first eight names remaining on the list, plus the number of alternate jurors thought necessary by the judge, who shall be the trial jury.~~

Whether using strike-and-replace or the struck method, the rules do not prescribe a method for replacing an excused prospective juror in the jury box with a member of the panel, deferring to the court’s discretion on the appropriate method.

### **1961 Amendment to Rule 47(e)**

#### **[Formerly Rule 47(a)(3)]**

~~[Rule 47(e) (formerly Rule 47(a)(3))] now compels the plaintiff to exercise all of his peremptory challenges prior to the defendant. The amended rule provides that the parties shall exercise their peremptory challenges alternately. Under the present rule, while the plaintiff receives the same number of peremptory challenges as the defendant, the order of exercising them resulted in an obvious inequity. The purpose of the proposed rule is to eliminate this inequity by giving both parties peremptory challenges which are not only equal in number but also in practical weight and value.~~

## Appendix 1B: Proposed Amendments to the Rules of Criminal Procedure

### Rule 16.3. Pretrial Conference

(a) **Generally.** [No Change.]

(b) **Objectives.** [No Change.]

(c) **Duty to Confer.** Before the conference, the court may require the parties to confer and submit memoranda, including all written and oral questions to be asked of prospective jurors during voir dire, before the conference.

(d) **Scope of Proceeding.** At the conference, the court may:

(1) hear motions made at or filed before the conference;

(2) set additional pretrial conferences and evidentiary hearings as appropriate;

(3) obtain stipulations to relevant facts; ~~and~~

(4) determine the areas of inquiry and specific questions to be asked by the court and the parties during voir dire, including any limitations on written or oral examination and whether to permit the parties to give brief pre-voir dire opening statements; and

(45) discuss and determine any other matters that will promote a fair and expeditious trial, including imposing time limits on trial proceedings, using juror notebooks, giving ~~brief pre-voir dire opening statements~~ and preliminary instructions, and managing documents and exhibits effectively during trial.

(e) **Stipulated Evidence.** [No Change.]

(f) **Record of Proceedings.** [No Change.]

**Rule 18.3. Jurors' Information**

(a) Information Provided to the Parties. Before conducting oral voir dire examination, ~~the court must furnish~~ each party must be provided with a list of the names of the prospective jurors on the panel called for the case. The list must include each prospective juror's zip code, employment status, occupation, employer, residency status, education level, prior jury duty experience, and any prior felony conviction within a specified time established by the jury commissioner or the court.

(b) Confidentiality of Eligibility and Biographical Information. The clerk must obtain and maintain juror information in a manner and form approved by the Supreme Court, and this information may be used only for the purpose of jury selection. ~~The court must keep all~~ All jurors' home and business telephone numbers and addresses are confidential; and may not be disclosed ~~disclose them~~ unless good cause is shown.

(c) Confidentiality of Case-Specific Written Questionnaires. If the court requires prospective jurors to complete case-specific written questionnaires, it must maintain any completed case-specific written questionnaires in a manner and form approved by the court as part of the case file. Before conducting oral voir dire, the prospective jurors' responses to the case-specific written questionnaires must be provided to each party. Any party or counsel receiving a copy of responses to the case-specific written questionnaires must not disclose the information to the public and may disclose the information only to the extent necessary for the proper conduct of the case. When jury selection is completed, each recipient must destroy or return to the court all copies of the responses to the case-specific written questionnaires.

#### Rule 18.4. Challenges

(a) **Challenge to the Panel.** [No Change.]

(b) **Challenge for Cause.** ~~On motion or on its own, the court must~~ The court, on motion or on its own motion, must excuse a prospective juror or jurors from service in the case if there is a reasonable ground to believe that the juror or jurors cannot render a fair and impartial verdict. A challenge for cause may be made at any time, but the court may deny a challenge if the party was not diligent in making it.

~~(c) **Peremptory Challenges.**~~

~~(1) *Generally.* The court must allow both parties the following number of peremptory challenges:~~

~~(A) 10, if the offense charged is punishable by death;~~

~~(B) 6, in all other cases tried in superior court; and~~

~~(C) two, in all cases tried in limited jurisdiction courts.~~

~~(2) *If Several Defendants Are Tried Jointly.* If there is more than one defendant, each defendant is allowed one-half the number of peremptory challenges allowed to one defendant. The State is not entitled to any additional peremptory challenges.~~

~~(3) *Agreement Between the Parties.* The parties may agree to exercise fewer than the allowable number of peremptory challenges.~~

#### COMMENTS

**2021 Comment to Rule 18.4(b).** Effective January 1, 2022, peremptory challenges were eliminated in the entire Arizona state court system to reduce, to the greatest degree possible, the role of improper bias in selecting jurors to ensure verdicts are rendered fairly and impartially. Judges, lawyers, and jurors all carry unique perspectives and views, which in prospective jurors can rise to the level of improper bias justifying their excusal for cause. Arizona law bars judges and lawyers from manifesting bias or prejudice while selecting a jury, whether on the basis of race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. Arizona Supreme Court Rule 81, Code of Judicial Conduct, Rule 2.3(B), (C).

**1973 Comment to Rule 18.4(b).** ~~When the predecessor to this section was adopted in 1973, it replaced the catalog of 15 grounds set forth in the 1956 Arizona Rules of Criminal Procedure, Rule 219. The omission of the list is carried over to this amended rule and is intended to direct the attention of attorneys and judges to the essential question whether a juror can try a case fairly. A challenge for cause can be based on a showing of facts from which an ordinary person would imply a likelihood of predisposition in favor of one of the parties.~~

~~In addition, a juror may be challenged who:~~

~~(1) has been convicted of a felony;~~

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- ~~(2) lacks any of the qualifications prescribed by law to render a person a competent juror;~~
- ~~(3) is of such unsound mind or body as to render him incapable of performing the duties of a juror;~~
- ~~(4) is related by consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant;~~
- ~~(5) stands in the relationship of guardian and ward, attorney and client, master and servant, or landlord and tenant, or is an employee of or member of the family of the defendant, or of the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;~~
- ~~(6) has been a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution;~~
- ~~(7) has served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information;~~
- ~~(8) has served on the trial jury which has tried another person for the offense charged in the indictment or information;~~
- ~~(9) has been a member of the jury formerly sworn to try the same charge and whose verdict was set aside, or which was discharged without a verdict after the case was submitted to it;~~
- ~~(10) has served as a juror in a civil action brought against the defendant for the act charged as an offense;~~
- ~~(11) is on the bond of the defendant or engaged in business with the defendant or with the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;~~
- ~~(12) is a witness on the part of the prosecution or defendant or has been served with a subpoena or bound by an undertaking as such;~~
- ~~(13) has a state of mind in reference to the action or to the defendant or to the person alleged to have been injured by the offense charged or on whose complaint the prosecution was instituted, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party;~~
- ~~(14) if the offense charged is punishable by death, entertains conscientious opinions which would preclude his finding the defendant guilty, in which case he must neither be permitted nor compelled to serve as a juror; or~~
- ~~(15) does not understand the English language sufficiently well to comprehend the testimony offered at the trial.~~

~~This section also permits a challenge for cause to be made whenever the cause appears. Under Rule 18.4(b), the trial court may deny the challenge if not seasonably made, but there is no absolute time limitation imposed by rule. Once the trial has begun, the prosecutor may be unable, because of double jeopardy, to invoke the right to challenge, unless there are sufficient alternate jurors to enable the trial to continue with one less juror.~~



## Rule 18.5. Procedure for Jury Selection

**(a) Swearing the Jury Panel.** Each prospective juror must swear or affirm that the answers provided in response to the case-specific written questionnaire are truthful. Before oral voir dire, All members of the jury panel each prospective juror must swear or affirm that they will truthfully answer all questions concerning their qualifications.

**(b) Explanation of Voir Dire.** At the beginning of any written or oral examination, the court must explain the purpose of voir dire, how the court and the parties will use the prospective jurors' information, and who may have access to the information prospective jurors provide.

**(c) Case-Specific Written Questionnaires.** Unless the court orders otherwise, the court should require each prospective juror to complete a case-specific written questionnaire in a manner and form approved by the court. The case-specific written questionnaire should include questions about the prospective juror's qualifications to serve in the case, any hardships that would prevent the prospective juror from serving, and whether the prospective juror could render a fair and impartial verdict.

**~~(b)~~(d) Calling Jurors for Examination.** The court must conduct voir dire orally. During oral examination, The the court may call to the jury box a number of prospective jurors equal to the number to serve plus the number of alternates ~~plus the number of peremptory challenges that the parties are permitted.~~ Alternatively, and at the court's discretion, all members of the panel may be examined.

**~~(e)~~(e) Inquiry by the Court; Brief Opening Statements.** Before orally examining the prospective jurors, the court must identify the parties and their counsel ~~and~~, briefly outline the nature of the case, ~~and explain the purpose of the examination.~~ The court must then ask any necessary questions about the prospective jurors' qualifications to serve in the case. With the court's permission and before oral voir dire examination, the parties may present brief opening statements to the entire jury panel.

**~~(d)~~(f) Voir Dire Examination.** In courts of record, voir dire examination must be conducted on the record. The court must conduct a thorough oral examination of the prospective jurors and control the voir dire examination. Upon request, the court must allow the parties ~~a reasonable~~ sufficient time, with other reasonable limitations, to conduct a further oral examination of the prospective jurors. A party's failure to submit questions to the court prior to examination should not be grounds to deny a party the opportunity to conduct an oral examination. However, the court may limit or terminate the parties' voir dire on grounds of abuse. Nothing in this rule precludes submitting written questionnaires to the prospective jurors or examining individual prospective jurors outside the presence of other prospective jurors.

**~~(e)~~(g) Scope of Examination.** The court must ensure the reasonable protection of the prospective jurors' privacy. Questioning must be limited to inquiries designed to elicit information relevant to asserting a possible challenge for cause ~~or enabling a party to intelligently exercise the party's peremptory challenges.~~

**~~(f)~~(h) Challenge for Cause.** Challenges for cause must be on the record and made out of the hearing of the prospective jurors. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. If the court grants a challenge for cause, it must excuse the affected prospective juror. If insufficient prospective jurors remain on the list, the court must add a prospective juror from a new panel. ~~All challenges for cause~~



~~must be made and decided before the court may call on the parties to exercise their peremptory challenges.~~

~~(g)(i) **Stipulation to Remove a Prospective Juror.** The parties may stipulate to the removal of a juror. **Exercise of Peremptory Challenges.** After examining the prospective jurors and completing all challenges for cause, the parties must exercise their peremptory challenges on the list of prospective jurors by alternating strikes, beginning with the State, until the peremptory challenges are exhausted or a party elects not to exercise further challenges. Failure of a party to exercise a challenge in turn operates as a waiver of the party's remaining challenges, but it does not deprive the other party of that party's full number of challenges. If the parties fail to exercise the full number of allowed challenges, the court will strike the jurors on the bottom of the list of prospective jurors until only the number to serve, plus alternates, remain.~~

~~(h)(i)~~ **Selection of Jury; Alternate Jurors.**

(1) *Trial Jurors.* After ~~the court has resolved any challenges for cause,~~ the prospective jurors remaining in the jury box or on the list of prospective jurors constitute the trial jurors.

(2) *Selection of Alternates and Instruction.* Just before the jury retires to begin deliberations, the clerk or court official must determine the alternate juror or jurors by lot or stipulation. When the jury retires to deliberate, the alternate or alternates may not participate, but the court must instruct the alternate juror or jurors to continue to observe the admonitions to jurors until the court informs them that a verdict has been returned or the jury has been discharged.

(3) *Replacing a Deliberating Juror.* If the court excuses a deliberating juror due to the juror's inability or disqualification to perform the required duties, the court may substitute an alternate juror to join the deliberations, choosing the alternate from among the qualified alternates in the order previously designated. If an alternate joins the deliberations, the court must instruct the jury to begin its deliberations anew.

~~(i)(k)~~ **Deliberations in a Capital Case.**

(1) – (2) [No Change.]

### COMMENTS

**2021 Comment to Rule 18.5(c).** To allow the process of challenging jurors for cause to work effectively, Rule 18.5(b) encourages the use of case-specific questionnaires during voir dire where feasible, deferring to the court on the method and manner of their administration. Courts may use paper or electronic questionnaires, administer questionnaires in advance of trial or immediately prior to oral voir dire, or use general or case-specific questions.

**1995 Comment Rule 18.5(bd) (Formerly Rule 18.5(b)).** Before a 1995 amendment, Rule 18.5(b) was interpreted to require trial judges to use the traditional “strike and replace” method of jury selection, where only a portion of the jury panel is examined, the remaining jurors being called upon to participate in jury selection only upon excusing for cause a juror in the initial group. A juror excused for cause leaves the courtroom, after which the excused juror's position is filled by a panel member who responds to all previous and future questions of the potential jurors.

As currently drafted, the trial judge is allowed to use the “struck” method of selection if the judge chooses. This procedure is thought by some to offer more advantages than the “strike and replace” method. *See* T. Munsterman, R. Strand and J. Hart, *The Best Method of Selecting Jurors*, THE JUDGES’ JOURNAL 9 (Summer 1990); A.B.A. Standards Relating to Juror Use and Management, Standard 7, at 68-74 (1983); and “The Jury Project,” Report to the Chief Judge of the State of New York 58-60 (1994). The “struck” method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. ~~Following disposition of the for cause challenges, the juror list is given to counsel for the exercise of their peremptory strikes. When all the peremptory strikes have been taken and the court has resolved all related issues under *Batson v. Kentucky*, 476 U.S. 79 (1986), the clerk calls the first 8 or 12 names, as the law may require, from those remaining on the list, plus the number of alternate jurors thought necessary by the judge who become the trial jury.~~

Whether using strike-and-replace or the struck method, the rules do not prescribe a method for replacing an excused prospective juror in the jury box with a member of the panel, deferring to the court’s discretion on the appropriate method.

**2021 Comment Rule 18.5(df).** When feasible, the court should permit liberal and comprehensive examination by the parties, refrain from imposing inflexible time limits, and use open-ended questions that elicit prospective jurors’ views narratively. This use of “[e]xtended voir dire,” questioning by the parties, and open-ended questions is intended to elicit more candid answers from prospective jurors and to reduce the parties’ reliance on demographic stereotypes that is more likely to arise from the use of “minimal voir dire,” questioning solely by the court, and closed-ended questions. *See* Jessica M. Salerno, et al., *The Impact of Minimal Versus Extended Voir Dire and Judicial Rehabilitation on Mock Jurors’ Decisions in Civil Cases*, 45 Law & Hum. Behav. 336 (2021). The court should refrain from attempting to rehabilitate prospective jurors by asking leading, conclusory questions that encourage prospective jurors to affirm that they can set aside their opinions and neutrally apply the law. ~~The court should instruct counsel that voir dire is permitted to enable counsel to ask questions seeking relevant information from jurors, but not to ask questions intended to raise arguments to the jurors.~~ The court should be particularly sensitive to the prejudice that can arise from voir dire by an unrepresented defendant.

## Appendix 1C: Proposed Amendments to the Arizona Justice Court Rules of Civil Procedure

### Rule 134. Trials

**a. Trial procedures.** The court may impose reasonable time limits for a trial or for any portion of a trial. The order of proceedings in a trial by jury, so far as applicable, also governs a trial to a judge without a jury. A jury will be summoned, and a trial to a jury will proceed, as provided by Title 22, Chapter 2 of the Arizona Revised Statutes, and as provided by this rule. Unless the parties agree otherwise, the number of individuals selected as trial jurors, and the number of jurors needed to render a verdict, shall be as provided by Title 21, Chapter 1, of the Arizona Revised Statutes, or as otherwise provided by law. The order of trial is as follows:

(1) Potential jurors are summoned to the court and are given an oath to truthfully answer questions about their qualifications to serve as trial jurors. The court may conduct an initial examination of prospective jurors by case-specific written questionnaire, orally, or by both methods. Case-specific written questionnaires may be administered before potential jurors are summoned to the court. If used, case-specific written questionnaires shall be administered in a manner and form used by the court in compliance with Rule 47(c)(3), Arizona Rules of Civil Procedure. Either after prospective jurors complete a case-specific written questionnaire or during an initial oral examination, the judge, and the parties, as the judge may allow, then ask questions to prospective jurors concerning their qualifications and fitness to serve as jurors. Potential jurors may be challenged for cause based on answers on a case-specific written questionnaire or during the course of questioning. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. Upon request, the judge may allow the parties to make brief opening statements to the prospective jurors before the questioning process. ~~After the questioning process, each side may exercise two peremptory challenges, or some other reasonable number of peremptory challenges as the court directs, of potential jurors.~~ The jurors then selected to hear the case are sworn, and the judge gives the jury preliminary instructions concerning the jury's duties, its conduct, the order of proceeding, and elementary legal principles that govern the trial. The judge will instruct the jurors that each of them may take handwritten notes during the trial, which the jurors can take to the jury room, and the court will provide jurors with note-taking materials.

(2) – (13) [No Change.]

**b. Motion for judgment as a matter of law.** [No Change.]

## Appendix 1D: Proposed Amendments to the Arizona Rules of Procedure for Eviction Actions

### Rule 12. Trial by Jury

a. When an action is called for trial by jury, the jury panel shall be assembled. Voir dire may be conducted by the court and the parties as the judge may allow, by case-specific written questionnaire, orally, or by both methods. Case-specific written questionnaires may be administered before potential jurors are summoned to the court. If used, case-specific written questionnaires shall be administered in a manner and form used by the court in compliance with Rule 47(c)(3), Arizona Rules of Civil Procedure. Failure to submit written voir dire questions a day before the panel is assembled, or by a date ordered by the court, waives the right to submit questions. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. ~~When, a~~After challenges for cause are exercised, a panel of ~~thirteen~~ seven jurors in justice court or ~~fifteen~~ nine jurors in superior court ~~is available; shall be assembled. the court shall permit three peremptory challenges per side to reduce the jury to seven in justice court or nine in superior court.~~ One of the jurors shall be selected as the alternate after the evidence is presented and before deliberations.

b. – d. [No Change.]

## *Appendix 1E: Proposed Amendment to A.R.S. § 22-223*

### **§ 22–223. Forming jury; challenges.**

**A.** At the time appointed for the trial, the justice of the peace shall call the names of the jurors summoned. If a sufficient number of qualified jurors do not attend, the trial shall be postponed.

**B.** Either party may challenge any juror ~~either for cause or~~ ~~peremptorily~~.

## Appendix 2A: Jury Selection Voir Dire Script, General Criminal

### VOIR DIRE SCRIPT

#### CRIMINAL

#### GENERAL

Good morning. This is the time set for trial in criminal case [insert case number and or name] Is the State ready to proceed? Is the Defense ready to proceed?

At this time, I will ask my clerk to put all of the prospective jurors under oath.

1. Is there anyone here who has difficulty hearing or seeing me? [Provide listening devices if available.]
2. Is there anyone who has any difficulty understanding or reading the English language?  
Let me explain jury selection in more detail. We are going to ask you questions to learn more information about you. At the end of jury selection, we want to make sure the people selected as trial jurors can be completely fair to both sides.<sup>1</sup>

We all come to this courtroom with attitudes, feelings, opinions, and life experiences that may affect the way we consider the testimony of a witness or how we evaluate evidence. And sometimes our attitudes, feelings and opinions are so strong that we do not see a way to change them even after considering new information. It is okay to acknowledge and talk about this, and we need you to do so to ensure justice is served in this case.

We are not suggesting how you feel is wrong; instead, we are trying to learn whether you have any attitudes, feelings, opinions, or life experiences that are so strong that they may cause you to favor one side or the other in this case. Justice requires equality and fairness to both sides. Sometimes individuals can be fair jurors in one case, but they might enter the jury box already favoring one side or another, and that's not fair.

It may feel like we are asking you a lot of personal questions. If you do not feel comfortable answering a question asked of you in front of the rest of the jurors, let me know and we will arrange to talk to you privately.

Please do not withhold information to be seated on the jury. Do not be concerned with whether your answers are "right" or "wrong." This is not any sort of test. Just be honest and candid in your answers, and do not be concerned with what you feel the lawyers or I might want to hear from you. You have each been assigned a juror number. Throughout this process, I and the lawyers will be referring to you by that number.

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<sup>1</sup> Objective analysis of the likelihood of a jurors' attitudes, beliefs and experiences will likely provide a more accurate picture of a juror's ability to be fair and impartial than the juror's own self-assessment and self-disclosure of bias. [\*See Jessica M. Salerno, et al., The Impact of Minimal Versus Extended Voir Dire and Judicial Rehabilitation on Mock Jurors' Decisions in Civil Cases\*, 45 Law & Hum. Behav. 336 \(2021\).](#)



## Report and Recommendations



Before we go any further, I want to introduce the staff for this division. The courtroom assistant is [insert name of courtroom assistant/bailiff]. The courtroom assistant helps me here in the courtroom and assists with the jury.

This division's judicial assistant is [insert name of judicial assistant]. If you have an emergency and need to reach my division, please contact [insert name of judicial assistant]. We will make sure that the seated jurors have my judicial assistant's phone number.

This division's court clerk is [insert name of division clerk]. My clerk keeps the official record of proceedings, handles all the exhibits and swears the witnesses and jurors.

Seated in front of me is the court reporter. The court reporter's name is [insert name of court reporter]. The court reporter writes down everything said in court so that we can have a word-for-word record. I can see you nod when you answer a question but my court reporter cannot write that as an answer to a question so make sure all of your answers are verbal and out loud so the record we have is clear.

[The court interpreter in this case is [insert name or names of interpreters]].

And my name is [insert name]. I am the judge presiding over this trial.

3. Does anybody know me or somebody on my staff? If you answer to the question is yes, please raise your juror card now with the number facing me.
4. [Counsel A] please introduce yourself and the persons seated at counsel table? Thank you. Do any of you know Counsel A or [insert names of people seated at counsel table]?
5. Does anyone know a person who works at the Maricopa County Attorney's Office/Attorney General's Office? [Follow up to assess whether the knowledge or relationship will cause the person to favor one side or the other; depending on the answers, the questioning may need to be conducted privately.]<sup>2</sup>
6. Does anyone know a person who works at [insert name of investigating agency]? [Follow up to assess whether the knowledge or relationship will cause the person to favor one side or the other; depending on the answers, the questioning may need to be conducted privately.]
7. [Counsel B] will you please introduce yourself and your client? Do any of you know [Counsel B] or [name of Defendant]? [Follow up to assess whether the knowledge or relationship will cause the person to favor one side or the other; depending on the answers, the questioning may need to be conducted privately. Any knowledge of Defendant should be conducted privately.]
8. Let me briefly tell you what this case is about:  
[Read agreed upon statement of case.]
9. Have any of you ever seen, heard or read anything about this case? [Consider questioning the jurors who respond "yes" to this question privately outside the presence of the entire panel.]

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<sup>2</sup> Delete any question that was asked in the case-specific written or online questionnaire.

10. The State alleges the events in this case took place [insert locations of crime(s)]. Do any of you live near this area now or in the past or do you frequently go to this area? If yes, do you believe your experience may cause you to favor one side?<sup>3</sup>
11. Let me tell you a bit about the schedule for the trial: This case is expected to last until [insert date]. Daily schedule will be Monday through Thursday, from [insert time a.m.] to 4:30 or 5:00 p.m. We do not have trial on Friday because the lawyers and I are handling matters in other cases. There is a lunch break from noon until 1:30 p.m., and usually one mid-morning and one mid-afternoon break.

I know that our court schedule here is likely not convenient to anyone. Please understand State law provides that a juror can be excused from service only if their absence from work would “tend materially and adversely to affect the public safety, health, welfare or interest,” or if service as a juror would impose an undue hardship on the juror.

With respect to financial hardships, jury service has a cost for everyone who serves. Some people miss work and will not be paid for their time. Some people work on commission and will miss out on potential work. Simply missing out on income or potential income is not in and of itself an undue hardship unless it will result in an inability for you to meet your monthly obligations like food and housing expenses. [insert information about the financial options available to jurors]

Is there anything about our anticipated trial schedule that presents an undue hardship for you, whether it be personal, business, or health? If so, please raise your juror card with the number facing toward me.

[Hear all the excuses and take notes. Outside presence of the jury meet with lawyers on the record and review potential strikes for hardship or cause] The following jurors have been excused: insert juror numbers.]

12. To be qualified to serve as a juror you must be a resident of [insert name of County], a citizen of the United States, and you must not have been convicted of a felony unless your civil right to serve as a jury has been restored. Is there any person who lacks one or more of these qualifications? If yes, please raise your juror card now.
13. I am now going to read a list of witnesses who may be called to testify during the trial. All of these persons may not be called to testify, but any of them might be and their names may be referenced. Please raise your juror card if you know, or think you might know, any of these people.

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<sup>3</sup> Judges gather information to assess whether there is reasonable ground to believe that a juror is unable to render a fair and impartial verdict. *See* Ariz. R. Crim. P. 18.4(b). The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. *See* Ariz. R. Crim. P. 18.5(g). Research suggests that attitudes that stem from life experience may be difficult to change. *See, e.g.,* Chenghuan Wu & David R. Shaffer, Susceptibility to Persuasive Appeals as a Function of Source Credibility and Prior Experience with the Attitude Object, 52 J. PERSONALITY & SOC. PSYCHOL. 677-88 (1987). Therefore, judges should be careful to avoid attempting to rehabilitate a juror by asking them questions to have the juror affirm they will follow the court’s instructions when the juror’s prior answers to questions demonstrates a reasonable ground to believe the juror cannot render a fair and impartial verdict. Research indicates that “[j]udicial rehabilitation [does] not reduce the biasing impact of [jurors’] preexisting attitudes on case judgments—but did result in mock jurors reporting that they were less biased, despite judicial rehabilitation not *actually* reducing their bias.” CITE Salerno.

[Read list of witnesses.]

Which witness do you think you know? [Explore relationship and whether that relationship will cause the prospective juror to favor one side. This conversation should be held outside the presence of the rest of the panel.]

14. The law requires the State to prove that a Defendant is guilty beyond a reasonable doubt. A Defendant in a criminal case is presumed by law to be innocent until proven guilty beyond a reasonable doubt; this means that the Defendant is not required to prove innocence.

The law does not require a defendant to produce any evidence. I'm going to ask you this multiple-choice question. The State has charged the Defendant with certain crimes and the Defendant has pled not guilty. At this point in time in which the State has produced no evidence of the Defendant's guilt, I want to ask if you believe:

- (a) The Defendant is guilty because they have been charged with a crime.
- (b) I don't know if the Defendant is guilty or not.
- (c) The Defendant is not guilty because no evidence has been presented yet.

Now, I'll ask you to raise your card as a read these three options again. How many of you believe:

- (a) The Defendant is guilty because they have been charged with a crime.
- (b) I don't know if the Defendant is guilty or not.
- (c) The Defendant is not guilty because no evidence has been presented yet.

[After cards are raised]. Remember, no evidence has been presented yet. Therefore, the Defendant is entitled to a presumption of innocence until proven guilty beyond a reasonable doubt so sitting here right now, the Defendant is not guilty. Is there anyone who does not agree with this principle of law?<sup>4</sup>

15. A lot of people feel a person who is on trial must have done something wrong. Who believes someone on trial probably did something wrong?<sup>5</sup>
16. (With approval of defense counsel) The Defendant in a criminal case has a constitutional right to not testify at trial. If the Defendant decides not to testify, you cannot consider that decision in determining whether the State proved the Defendant is guilty of the crime(s) charged. If the Defendant does not testify, raise your juror card if you assumes or believe that the Defendant must have done something wrong or that the Defendant is guilty of something?
17. Is there anyone who would hold the Defendant's decision to remain silent against him/her?<sup>6</sup>

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<sup>4</sup> During lawyer or party conducted questioning of jurors, liberally permit questioning of jurors regarding topics addressed by the court, including the jurors' attitudes and opinions of the presumption of innocence.

<sup>5</sup> Avoid attempting to rehabilitate jurors through leading questions to have individuals affirm they will set this belief aside. [\*See Jessica M. Salerno, et al., The Impact of Minimal Versus Extended Voir Dire and Judicial Rehabilitation on Mock Jurors' Decisions in Civil Cases, 45 Law & Hum. Behav. 336 \(2021\).\*](#) Also take opportunities to compliment prospective jurors who provide candid information regarding bias. Judges can consider asking open ended questions to explore the juror's attitudes, opinions, and feelings. For example, judges could consider asking an open-ended follow-up question like "What caused you to raise your card to the question I just asked?"

<sup>6</sup> During lawyer or party conducted questioning of jurors, liberally permit questioning of jurors regarding topics addressed by the court, including the jurors' attitudes and opinions of the Defendant's right to remain silent.

18. I, as the judge, will instruct you on the law in this case. Sometimes people have beliefs about what they wished the law was or they believe that certain conduct should not be illegal. If you do not agree with the law as instructed by the judge, please raise your juror card if you believe you will have a difficult time applying the facts to a law you disagree with?
19. In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it. In evaluating testimony, you should use the tests for accuracy and truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness's ability to see or hear or know the things the witness testified to; the quality of the witness's memory; the witness's manner while testifying; whether the witness has any motive, bias, or prejudice; whether the witness is contradicted by anything the witness said or wrote before trial, or by other evidence; and the reasonableness of the witness's testimony when considered in the light of the other evidence. As a trial juror, you will be asked to consider all the evidence in light of reason, common sense, and experience.

No witness is entitled to receive greater or lesser weight or credibility just because of their job or because of their gender, race, or ethnicity. After a witness comes into the courtroom, you, as a juror, apply the tests for determining matters of importance of everyday life and you will decide whether you believe everything a witness says, or part of what they say, or none of what they say.

Please raise your juror card if you believe you might give a witness more credibility or weight just because of their job, their gender, their race or their ethnicity?
20. Let's be even more specific on this point. The testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because the witness is a law enforcement officer. You are to consider the testimony of a police officer just as you would the testimony of any other witness. Who would be likely to believe a law enforcement officer **more or less** simply because the person is a law enforcement officer? <sup>7</sup>
21. Have any of you, or any members of your family or close friends, ever studied or practiced law or served as a law enforcement officer? [Ask questions regarding who the person is in connection to the juror and what type of experience or exposure the juror has to assess whether this experience or relationship will cause the juror to favor one side.]
22. Look around at one another. Do you know other members of the jury panel? [Would the fact that you know juror \_\_\_\_ affect your decision making on this case. In other words, would you be able to make a decision on your own, without undue influence from juror \_\_\_\_?]
23. Have you, or a close relative or friend of yours, ever been arrested, charged, or convicted of any crime other than a minor traffic offense like driving over the speed limit or running a red light. [Ask questions regarding who the person is in connection to the juror and what type of experience or exposure the juror has to assess whether this experience could cause the juror to favor one side, e.g., Is there anything about that experience that would cause you to favor one side or the other in this case?]
24. Have you, or a close relative or friend of yours, ever been the victim of a crime? [Ask questions regarding who the person is in connection to the juror and what type of experience or exposure

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<sup>7</sup> Avoid attempting to rehabilitate jurors through leading questions to have individuals affirm they will set this belief aside. [See Jessica M. Salerno, et al., \*supra\* at 349.](#)

the juror has to assess whether this experience could cause the juror to favor one side, e.g., Is there anything about that experience that would cause you to favor one side or the other in this case?]

25. Have you, or a close relative or friend of yours, ever witnessed a crime? [Ask questions regarding who the person is in connection to the juror and what type of experience or exposure the juror has to assess whether this experience could cause the juror to favor one side, e.g., Is there anything about that experience that would cause you to favor one side or the other in this case?]
26. There are some questions on the back of your juror number that I am going to ask each of you to answer. If you or your spouse or significant other is retired, please tell us the person's job prior to retirement. If you have served on a jury before, please tell us the kind and type of case it was. For example, it a civil car accident or a criminal bank robbery, details like that, if you remember. Please also tell us whether there was a verdict, what it was, if you can recall, and whether you served as foreperson of the jury. Juror #1?
27. Let me ask a last, very broad question: Is there anything else you think the attorneys or I should know about you before selecting those jurors who will serve in this case?
28. I have asked all the questions I had planned to ask. Sometimes I find that we get to the end of the questioning and jurors have thought about additional answers they might have to questions that were asked earlier. They wonder if they should give the answers or not. Please give the answers. If you have anything in mind now that you are wondering if you should tell me about, or you wish you had said something about earlier, please tell me now. There is no better time to do it than now.
29. Questioning by the State.
30. Questioning by the Defense.
31. We will now take a short recess to complete the process of jury selection. Only [insert number of jurors that will be selected including alternates] individuals can serve as jurors in this case. Please wait outside the courtroom during this recess. When you are called back into court, please sit at random in the back of the courtroom. During the recess, do not discuss the case or anything connected with it among yourselves or with anyone else. We estimate that this recess will be about \_\_\_\_ minutes, so be ready to come back into court in \_\_\_\_ minutes.
32. [Outside the presence of prospective jurors, on the record, address any motions to remove jurors for cause]. [Insert language regarding standard to apply request for challenge.] Does the State pass the panel for cause? Does the Defendant pass the panel for cause?
33. The clerk will now read the numbers of the jurors selected to try the case. As your number is called, please come forward and take a seat in the jury box as directed by the courtroom assistant. [Clerk reads the juror numbers of trial jurors.]
34. Those of you who were not selected as jurors thank you for your participation here today and for your willingness to serve on this jury. You are now excused.
35. The jury will please stand and be sworn. [Clerk administers the oath.] Thank you. Please be seated.
36. [Clerk reads the charges.] To (each) charge, Defendant has entered a plea of Not Guilty.
37. Read preliminary instructions.



OTHER QUESTIONS

[Defendant] has made the decision not to attend this trial. You will be given a legal instruction not to take into account the Defendant's absence from the trial in considering whether the State has proved its case beyond a reasonable doubt. Please raise your juror card if you believe you will consider the Defendant's absence from the trial in making your decision in this case.]



## Appendix 2B: Jury Selection Voir Dire Script, General Civil

### VOIR DIRE SCRIPT CIVIL GENERAL

Good morning. This is the time set for trial in civil case [XXXX-XXXX] Is the Plaintiff ready to proceed? Is the Defense ready to proceed?

At this time, I will ask my clerk to put all of the prospective jurors under oath.

1. Is there anyone here who has difficulty hearing or seeing me? [Provide listening devices if available.]
2. Is there anyone who has any difficulty understanding or reading the English language?

Let me explain jury selection in more detail. We are going to ask you questions to learn more information about you. At the end of jury selection, we want to make sure the people selected as trial jurors can be completely fair to both sides.<sup>1</sup>

We all come to this courtroom with attitudes, feelings, opinions, and life experiences that may affect the way we consider the testimony of a witness or how we evaluate evidence. And sometimes our attitudes, feelings and opinions are so strong that we do not see a way to change them even after considering new information. It is okay to acknowledge and talk about this, and we need you to do so to ensure justice is served in this case.

We are not suggesting how you feel is wrong; instead, we are trying to learn whether you have any attitudes, feelings, opinions, or life experiences that are so strong that they may cause you to favor one side or the other in this case. Justice requires equality and fairness to both sides. Sometimes individuals can be fair jurors in one case, but they might enter the jury box already favoring one side or another, and that's not fair.

It may feel like we are asking you a lot of personal questions. If you do not feel comfortable answering a question asked of you in front of the rest of the jurors, let me know and we will arrange to talk to you privately.

Please do not withhold information to be seated on the jury. Do not be concerned with whether your answers are "right" or "wrong." This is not any sort of test. Just be honest and candid in your answers, and do not be concerned with what you feel the lawyers or I might want to hear from you. You have each been assigned a juror number. Throughout this process, I and the lawyers will be referring to you by that number.

Before we go any further, I want to introduce the staff for this division. The courtroom assistant is [insert name of courtroom assistant/bailiff]. The courtroom assistant helps me here in the courtroom and assists with the jury.

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<sup>1</sup> Objective analysis of the likelihood of a jurors' attitudes, beliefs and experiences will likely provide a more accurate picture of a juror's ability to be fair and impartial than the juror's own self-assessment and self-disclosure of bias. See Jessica M. Salerno, et al., *The Impact of Minimal Versus Extended Voir Dire and Judicial Rehabilitation on Mock Jurors' Decisions in Civil Cases*, 45 Law & Hum. Behav. 336 (2021).

## Report and Recommendations



This division's judicial assistant is [insert name of judicial assistant]. If you have an emergency and need to reach my division please contact [insert name of judicial assistant]. We will make sure that the seated jurors have my judicial assistant's phone number.

This division's court clerk is [insert name of division clerk]. My clerk keeps the official record of proceedings, handles all the exhibits and swears the witnesses and jurors.

Seated in front of me is the court reporter. The court reporter's name is [insert name of court reporter]. The court reporter writes down everything said in court so that we can have a word-for-word record. I can see you nod when you answer a question but my court reporter cannot write that as an answer to a question so make sure all of your answers are verbal and out loud so the record we have is clear.

[The court interpreter in this case is [insert name or names of interpreters]].

And my name is [insert name]. I am the judge presiding over this trial.

3. Does anybody know me or somebody on my staff? If you answer to the question is yes, please raise your juror card now with the number facing me.
4. [Counsel A] please introduce yourself and the persons seated at counsel table? Thank you. Do any of you know Counsel A or [insert names of people seated at counsel table]?
5. Does anyone know a person who works at [name of law firm for Counsel A]? [Follow up to assess whether the knowledge or relationship will cause the person to favor one side or the other; depending on the answers, the questioning may need to be conducted privately.]<sup>2</sup>
6. [Counsel B] will you please introduce yourself and your client? Do any of you know [Counsel B] or [name of Defendant]? [Follow up to assess whether the knowledge or relationship will cause the person to favor one side or the other; depending on the answers, the questioning may need to be conducted privately. Any knowledge of Defendant should be conducted privately.]
7. Does anyone know a person who works at [name of law firm for Counsel B]? [Follow up to assess whether the knowledge or relationship will cause the person to favor one side or the other; depending on the answers, the questioning may need to be conducted privately.]
8. Let me briefly tell you what this case is about:  
[Read agreed upon statement of case.]
9. Have any of you ever seen, heard or read anything about this case? [Consider questioning the jurors who respond "yes" to this question privately outside the presence of the entire panel.]<sup>3</sup>

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<sup>2</sup> Delete any question that was asked in the case-specific written or online questionnaire.

<sup>3</sup> Judges gather information to assess whether there is reasonable ground to believe that a juror is unable to render a fair and impartial verdict. *See* Ariz. R. Civ. P. 47(d)(3). The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. *See id.* Research suggests that attitudes that stem from life experience may be difficult to change. *See, e.g.,* Chenghuan Wu & David R. Shaffer, *Susceptibility to Persuasive Appeals as a Function of Source Credibility and Prior Experience with the Attitude Object*, 52 J. PERSONALITY & SOC. PSYCHOL. 677, 677-88 (1987). Therefore, judges should be careful to avoid attempting to rehabilitate a juror by asking them questions to have the juror affirm they will follow the court's instructions when the juror's prior answers to questions demonstrates a reasonable ground to believe the juror cannot render a fair and impartial verdict. Research indicates that "[j]udicial rehabilitation [does] not reduce the biasing impact of [jurors'] preexisting attitudes on case judgments—but

10. Let me tell you a bit about the schedule for the trial: This case is expected to last until [insert date]. The daily schedule will be Monday through Thursday, from [insert time a.m.] to 4:30 or 5:00 p.m. We do not have trial on Friday because the lawyers and I are handling matters in other cases. There is a lunch break from noon until 1:30 p.m., and usually one mid-morning and one mid-afternoon break.

I know that our court schedule here is likely not convenient to anyone. Please understand State law provides that a juror can be excused from service only if their absence from work would "tend materially and adversely to affect the public safety, health, welfare or interest," or if service as a juror would impose an undue hardship on the juror.

With respect to financial hardships, jury service has a cost for everyone who serves. Some people miss work and will not be paid for their time. Some people work on commission and will miss out on potential work. Simply missing out on income or potential income is not in and of itself an undue hardship unless it will result in an inability for you to meet your monthly obligations like food and housing expenses. [insert information about the financial options available to jurors]

Is there anything about our anticipated trial schedule that presents an undue hardship for you, whether it be personal, business, or health? If so, please raise your juror card with the number facing toward me.

[Hear all the excuses and take notes. Outside presence of the jury meet with lawyers on the record and review potential strikes for hardship or cause] The following jurors have been excused: insert juror numbers.]

11. To be qualified to serve as a juror you must be a resident of [insert name of County], a citizen of the United States, and you must not have been convicted of a felony unless your civil right to serve as a jury has been restored. Is there any person who lacks one or more of these qualifications? If yes, please raise your juror card now.
12. I am now going to read a list of witnesses who may be called to testify during the trial. All of these persons may not be called to testify, but any of them might be and their names may be referenced. Please raise your juror card if you know, or think you might know, any of these people.

[Read list of witnesses.]

Which witness do you think you know? [Explore relationship and whether that relationship will cause the prospective juror to favor one side. This conversation should be held outside the presence of the rest of the panel.]

In Arizona, jurors must follow the law whether they agree with it or not. As jurors you are the finders of fact. After you determine the facts, you may decide some of the court's legal instructions no longer apply. What you cannot do, however, is disregard the court's legal instructions because you do not like the law or do you not agree with it. If you do not agree with

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did result in mock jurors reporting that they were less biased, despite judicial rehabilitation not *actually* reducing their bias." See Jessica M. Salerno, et al., *supra* at 336.

the law as instructed by the judge, please raise your juror card if you believe you will have a difficult time applying the facts to a law you disagree with? <sup>4</sup>

13. In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it. In evaluating testimony, you should use the tests for accuracy and truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness's ability to see or hear or know the things the witness testified to; the quality of the witness's memory; the witness's manner while testifying; whether the witness has any motive, bias, or prejudice; whether the witness is contradicted by anything the witness said or wrote before trial, or by other evidence; and the reasonableness of the witness's testimony when considered in the light of the other evidence. As a trial juror, you will be asked to consider all the evidence in light of reason, common sense, and experience.

No witness is entitled to receive greater or lesser weight or credibility just because of their job or because of their gender, race, or ethnicity. After a witness comes into the courtroom, you, as a juror, apply the tests for determining matters of importance of everyday life and you will decide whether you believe everything a witness says, or part of what they say, or none of what they say.

Please raise your juror card if you believe you might give a witness more credibility or weight just because of their job, their gender, their race or their ethnicity?

14. Let's be even more specific on this point. The testimony of a law enforcement officer/doctor is not entitled to any greater or lesser importance or believability merely because the witness is a law enforcement officer/doctor. You are to consider the testimony of a law enforcement officer/doctor just as you would the testimony of any other witness. Who would be likely to believe a law enforcement officer/doctor **more or less** simply because the person is a law enforcement officer/doctor?
15. Have any of you, or any members of your family or close friends, ever studied or practiced law or served as a law enforcement officer? [Ask questions regarding who the person is in connection to the juror and what type of experience or exposure the juror has to assess whether this experience or relationship will cause the juror to favor one side.]
16. Look around at one another. Do you know other members of the jury panel? [Would the fact that you know juror \_\_\_\_ affect your decision making on this case. In other words, would you be able to make a decision on your own, without undue influence from juror \_\_\_\_?]
17. There are some questions on the back of your juror number that I am going to ask each of you to answer. If you or your spouse or significant other is retired, please tell us the person's job prior to retirement. If you have served on a jury before, please tell us the kind and type of case it was. For example, it a civil car accident or a criminal bank robbery, details like that, if you remember.

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<sup>4</sup> Avoid attempting to rehabilitate jurors through leading questions to have individuals affirm they will set this belief aside. See Jessica M. Salerno, et al., *supra* at 349. Also take opportunities to compliment prospective jurors who provide candid information regarding bias. Judges can consider asking open ended questions to explore the juror's attitudes, opinions, and feelings. For example, judges could consider asking an open-ended follow-up question like "What caused you to raise your card to the question I just asked?" During lawyer or party conducted questioning of jurors, liberally permit questioning of jurors regarding topics addressed by the court.

## Report and Recommendations



Please also tell us whether there was a verdict, what it was, if you can recall, and whether you served as foreperson of the jury. [call on jurors]?

18. Let me ask a last, very broad question: Is there anything else you think the attorneys or I should know about you before selecting those jurors who will serve in this case?
19. I have asked all the questions I had planned to ask. Sometimes I find that we get to the end of the questioning and jurors have thought about additional answers they might have to questions that were asked earlier. They wonder if they should give the answers or not. Please give the answers. If you have anything in mind now that you are wondering if you should tell me about, or you wish you had said something about earlier, please tell me now. There is no better time to do it than now.
20. Questioning by the Plaintiff.
21. Questioning by the Defense.
22. We will now take a short recess to complete the process of jury selection. Only [insert number of jurors that will be selected including alternates] individuals can serve as jurors in this case. Please wait outside the courtroom during this recess. When you are called back into court, please sit at random in the back of the courtroom. During the recess, do not discuss the case or anything connected with it among yourselves or with anyone else. We estimate that this recess will be about \_\_\_\_ minutes, so be ready to come back into court in \_\_\_\_ minutes.
23. [Outside the presence of prospective jurors, on the record, address any motions to remove jurors for cause]. [Insert language regarding standard to apply request for challenge.] Does the Plaintiff pass the panel for cause? Does the Defendant pass the panel for cause?
24. The clerk will now read the numbers of the jurors selected to try the case. As your number is called, please come forward and take a seat in the jury box as directed by the courtroom assistant. [Clerk reads the juror numbers of trial jurors.]
25. Those of you who were not selected as jurors thank you for your participation here today and for your willingness to serve on this jury. You are now excused.
26. The jury will please stand and be sworn. [Clerk administers the oath.] Thank you. Please be seated.
27. Read preliminary instructions.

### OTHER QUESTIONS

## Appendix 3A: Written Questionnaire; General Criminal (Long)

### WRITTEN CRIMINAL QUESTIONNAIRE (GENERAL)

Please answer the following questions honestly. [If the judge has decided to seal the questionnaires: Your answers will only be viewed by the judge, the lawyers, and parties.] We use this questionnaire to get information from you to help us pick jurors who will be fair to both sides.

We all have attitudes, feelings, opinions, and life experiences that may affect the way we consider a case. It is okay to acknowledge and talk about these attitudes, feelings, opinions, and life experiences, and we need you to do so to ensure justice is served in this case.

Please do not withhold information. Please make sure your answers are as complete as possible. Complete answers are more helpful and will likely shorten the time it takes to select a jury. Do not be concerned with whether your answers are “right” or “wrong”; this is not any sort of test. Just be honest and candid in your answers.

You are not allowed to do any research regarding this case at all. You may not look up the parties or the lawyer. As a trial juror you must decide the case based on the evidence presented during trial.

If you have trouble reading, understanding, or filling out this questionnaire, please [insert how you want the juror to seek help].

### GENERAL INFORMATION

1. Juror Number:
2. Your Name:
3. Are you a resident of [insert county]?
  - ☐ Yes
  - ☐ No
4. Are you a citizen of the United States?
  - ☐ Yes
  - ☐ No
5. Have you been convicted of a felony?
  - ☐ Yes
  - ☐ No
6. If yes, did you restore your civil rights?
  - ☐ Yes
  - ☐ No
  - ☐ Unsure



## Report and Recommendations



7. Do you have difficulty understanding or reading the English language?  
☐ Yes  
☐ No
8. Do you have any difficulty seeing, hearing, or do you have any other medical problems that may affect your ability to serve as a juror?  
☐ Yes  
☐ No  
☐ Unsure
9. If you answered “Yes” or “Unsure” to the prior question, please explain.

### CASE SPECIFIC INFORMATION

10. [CASE SUMMARY listed here]  
  
Have you seen, heard, or read anything about this case?  
☐ Yes  
☐ No
11. If yes, what do you believe you have seen, heard, or read?
12. Have you, or any members of your close family or friends, ever been involved in a case similar to this?  
☐ Yes  
☐ No
13. If yes, please explain.
14. If you answered “Yes” to Question 12, do you feel this experience might cause you to favor one side over the other?  
☐ Yes  
☐ No  
☐ Unsure
15. If you answered “Yes” or “Unsure” to Question 14, please explain why you answered “Yes” or “Unsure.”
16. The State alleges the events in this case took place [insert locations of alleged crime(s)]. Do you live near this area or do you often go to this area?  
☐ Yes  
☐ No

## Report and Recommendations



17. If you answered “Yes” to the prior question, do you feel your familiarity with the area might cause you to favor one side over the other?
- ☐ Yes
  - ☐ No
18. The following people may testify at trial. Do you think you might know, any of these people?
- ☐ Yes
  - ☐ No
19. If you answered “Yes,” please answer the following questions:
- a. Which witness do you think you know?
  - b. How do you know the person?
  - c. Do you feel your relationship might cause you to favor one side over the other?
    - ☐ Yes
    - ☐ No
    - ☐ Unsure
  - d. Please explain why you said “Yes” or “Unsure” to the prior question?
19. The law requires the State to prove that a Defendant is guilty beyond a reasonable doubt. A Defendant in a criminal case is presumed by law to be innocent until proven guilty beyond a reasonable doubt. The law does not require a defendant to testify or present any evidence. A Defendant has a constitutional right to remain silent. If a Defendant decided not to testify, would you:
- ☐ Believe the Defendant must have done something wrong.
  - ☐ Believe the Defendant probably has done something wrong.
  - ☐ Not consider it any way as to the Defendant or this case.
  - ☐ None of the above. Please explain.
20. Do you think you would hold a Defendant’s decision to remain silent against them?
- ☐ Yes
  - ☐ No
  - ☐ Unsure
21. Sometimes people disagree with the law, such as a law making certain behavior a crime. If you do not agree with a law, do you believe:
- ☐ I will be unable to apply the facts to the law I do not agree with.
  - ☐ I might be unable to apply the facts to the law I do not agree with.
  - ☐ I might be able to apply the facts to the law I do not agree with.
  - ☐ I will definitely be able to apply the facts to the law I do not agree with.
  - ☐ I don’t know how I would feel about this.
22. Would you, as a juror, give law enforcement officers when testifying as a witness in a case, more credibility, less credibility, or the same credibility as anyone else’s testimony?
- ☐ More credibility.
  - ☐ Less credibility.
  - ☐ Same credibility

## Report and Recommendations



23. Do you have any opinions about law enforcement officers that might cause you to favor one side over the other?  
☐ Yes  
☐ No  
☐ Unsure
24. Have you, your significant other, or a close family member, studied or practiced law or had training in the law?  
☐ Yes  
☐ No
25. If you answered “Yes” to the prior question, who is the person in relation to you (for example, my sister)?
26. What type of legal training did the person or people have?
27. Would this experience cause you to favor one side over the other?  
☐ Yes  
☐ No  
☐ Unsure
28. Have any of you, or any members of your family or close friends, ever served in a law enforcement (either civilian or military)?  
☐ Yes  
☐ No
29. If you answered “Yes” to the prior question, who is the person in relation to you (for example, my sister)?
30. What agency or agencies did the person or people work for?
31. Would this experience cause you to favor one side over the other?  
☐ Yes  
☐ No  
☐ Unsure
32. Have you, or a close relative or friend of yours, ever been arrested, charged, or convicted of any crime other than a minor traffic offense?  
☐ Yes  
☐ No
33. If you answered “Yes” to the prior question, who is the person in relation to you (for example, my sister)?
34. What agency or agencies investigated the alleged crime(s)?
35. How do you feel about the experience?

## Report and Recommendations



36. Would this experience cause you to favor one side over the other?  
☐ Yes  
☐ No  
☐ Unsure
37. Have you, or a close relative or friend of yours, ever been the victim of a crime?  
☐ Yes  
☐ No
38. What was the crime(s)?
39. Was someone charged for the crime(s)?
40. Was there a trial?  
☐ Yes  
☐ No
41. If yes, what was the outcome of the trial?
42. Do you remember what police agency or agencies investigated the crime(s)?
43. Would this experience cause you to favor one side over the other?  
☐ Yes  
☐ No  
☐ Unsure
44. Have you ever witnessed a crime(s)?
45. What was the crime(s)?
46. Was someone charged for the crime(s)?
47. Did you report the crime to police?  
☐ Yes  
☐ No
48. If no, why not?
49. Was there a trial?  
☐ Yes  
☐ No
50. If yes, did you testify?  
☐ Yes  
☐ No
51. What police agency or agencies investigated the crime?
52. Would this experience cause you to favor one side over the other?

## Report and Recommendations



53. This trial is scheduled to start [insert date] and continue until [insert date]. The daily schedule will be Monday through Thursday, from [insert time a.m.] to 4:30 or 5:00 p.m. There is no trial on Fridays. There is a lunch break from noon until 1:30 p.m., and usually one mid-morning and one mid-afternoon break. The law provides that a juror can be excused from service only if their absence from work would "tend materially and adversely to affect the public safety, health, welfare or interest", or if service as a juror would impose an undue hardship on the juror.

[Insert information about financial options available to jurors]

Is there anything about our anticipated trial schedule that presents an undue hardship for you, whether it be personal, business, or health?

- ☐ Yes
- ☐ No
- ☐ Unsure

54. If you answered "Yes" or "Unsure" please describe the hardship.

55. Have you ever been called as a witness in court?

- ☐ Yes
- ☐ No

56. If "Yes", please describe the type of case and why you were called as a witness.

57. Have you ever served on jury?

- ☐ Yes
- ☐ No
- ☐ Unsure

58. If you answered "Yes" please answer the following questions:

- a. What type of case was it or what was it about?
- b. How long ago was your service as a juror?
- c. Did the jury reach a verdict?
- d. What was the verdict if you remember?
- e. Were you the foreperson.?

59. Have you ever served on a grand jury?

- ☐ Yes
- ☐ No

## Report and Recommendations



60. If you answered “Yes” please answer the following questions,
- How long ago did you serve on the grand jury?
  - Were you the foreperson?
61. What is your age?
62. What is the highest level of education you completed?
- ☐ Grade school or less
  - ☐ Some high school
  - ☐ High school graduate
  - ☐ Some college
    - What was your major?
  - ☐ College graduate
    - What was your major?
  - ☐ Post graduate study
    - Please describe the graduate program.
  - ☐ Technical, vocational, or business school
    - Please describe the type of program.
  - ☐ Other
    - Please explain.
63. What is your current employment status?
- ☐ Employed full time
  - ☐ Employed part time
  - ☐ Retired
  - ☐ Student
  - ☐ Unemployed looking for work
  - ☐ Unemployed not looking for work
  - ☐ Caregiver or homemaker
  - ☐ Other
    - Please explain.
64. Do you know anyone who works at the [insert county name] County Attorney’s Office/Office of the Attorney General?
- ☐ Yes
  - ☐ No
65. If you answered “Yes” to the prior question, please provide the following information:
- Who do you know?
  - Describe your relationship (for example, we have been friends for 5 years).
  - Do you feel your relationship might cause you to favor one side over the other?<sup>1</sup>
66. Do you know anyone who works at the [investigating agency]?
- ☐ Yes
  - ☐ No



## Report and Recommendations



67. If you answered “Yes” to the prior question, please provide the following information:
- Who do you know?
  - Describe your relationship (for example, we have been friends for 5 years).
  - Do you feel your relationship might cause you to favor one side over the other?
68. Have you had any interaction with or experience with law enforcement officers from [investigating agency]?
- ☐ Yes
- ☐ No
69. If you answered “Yes” to the prior question, please provide the following information:
- Please describe your experience.
  - Do you feel your experience might cause you to favor one side over the other?
65. Do you know anyone who [insert Defense Counsel’s name and/or agency or law firm if requested]?
- ☐ Yes
- ☐ No
66. If you answered “Yes” to the prior question, please provide the following information:
- Who do you know?
  - Describe your relationship (for example, we have been friends for 5 years).
  - Do you feel your relationship might cause you to favor one side over the other?
70. Is there anything else you think we should know about your ability or willingness to be a juror in this case?
71. For any reason, are you unable or unwilling to sit in judgment of another person?

### OTHER QUESTIONS

72. [Insert defendant’s name] has made the decision to represent himself/herself at this trial. A Defendant has the right to represent himself or herself during trial. How do you feel about a person’s decision to represent themselves?]
73. [Insert language other than English] will be spoken during this trial and the Defendant/victim/witnesses will use an interpreter because they are more comfortable hearing what is said in [Insert language other than English]. How do you feel about the use of interpreters during trial?
74. Do you read, write, or understand [Insert language other than English]?

In signing this questionnaire, I affirm the answers are true.

## Appendix 3B: Written Questionnaire; General Criminal (Short)

### WRITTEN CRIMINAL QUESTIONNAIRE (GENERAL)

Please answer the following questions honestly. [If the judge has decided to seal the questionnaires: Your answers will only be viewed by the judge, the lawyers, and parties.] We use this questionnaire to get information from you to help us pick jurors who will be fair to both sides.

We all have attitudes, feelings, opinions, and life experiences that may affect the way we consider a case. It is okay to acknowledge and talk about these attitudes, feelings, opinions, and life experiences, and we need you to do so to ensure justice is served in this case.

Please do not withhold information. Please make sure your answers are as complete as possible. Complete answers are more helpful and will likely shorten the time it takes to select a jury. Do not be concerned with whether your answers are “right” or “wrong”; this is not any sort of test. Just be honest and candid in your answers.

You are not allowed to do any research regarding this case at all. You may not look up the parties or the lawyer. As a trial juror you must decide the case based on the evidence presented during trial.

If you have trouble reading, understanding, or filling out this questionnaire, please [insert how you want the juror to seek help].

### GENERAL INFORMATION

1. Juror Number:
3. Your Name:
3. Are you a resident of [insert county name] County?  
☐ Yes  
☐ No
5. Are you a citizen of the United States?  
☐ Yes  
☐ No
6. Have you been convicted of a felony?  
☐ Yes  
☐ No
7. If yes, did you restore your civil rights?  
☐ Yes  
☐ No  
☐ Unsure

## Report and Recommendations



8. Do you have difficulty understanding or reading the English language?
- ☐ Yes
- ☐ No
9. Do you have any difficulty seeing, hearing, or do you have any other medical problems that may affect your ability to serve as a juror?
- ☐ Yes
- ☐ No
- ☐ Unsure
10. If you answered “Yes” or “Unsure” to Question 8, please explain.

### CASE SPECIFIC INFORMATION

11. [CASE SUMMARY listed here]
- Have you seen, heard, or read anything about this case?
- ☐ Yes
- ☐ No
12. If you answered “Yes” to Question 10, what do you believe you have seen, heard, or read?
13. Have you, or any members of your close family or friends, ever been involved in a case similar to this?
- ☐ Yes
- ☐ No
14. If you answered “Yes” to Question 12, please explain.
15. If you answered “Yes” to Question 12, do you feel this experience might cause you to favor one side over the other?
- ☐ Yes
- ☐ No
- ☐ Unsure
16. If you answered “Yes” or “Unsure” to Question 14, please explain why you answered “Yes” or “Unsure.”
17. The following people may testify at trial. Do you think you might know, any of these people?
- ☐ Yes
- ☐ No

## Report and Recommendations



18. If you answered “Yes” to Question 16, please answer the following questions:
- b. Which witness do you think you know?
  - c. How do you know the person?
  - d. Do you feel your relationship might cause you to favor one side over the other?
    - ☐ Yes
    - ☐ No
    - ☐ Unsure
  - e. Please explain why you said “Yes” or “Unsure” to the prior question?
19. Would you, as a juror, give law enforcement officers when testifying as a witness in a case, more credibility, less credibility, or the same credibility as anyone else’s testimony?
- ☐ More credibility.
  - ☐ Less credibility.
  - ☐ Same credibility
19. Do you have any opinions about law enforcement officers that might cause you to favor one side over the other?
- ☐ Yes
  - ☐ No
  - ☐ Unsure
28. If you answered “Yes” or “Unsure” to Question 19, please explain your answer why you answered “Yes” or “Unsure.”
29. Have you, or a close relative or friend of yours, ever been arrested, charged, or convicted of any crime other than a minor traffic offense?
- ☐ Yes
  - ☐ No
30. If you answered “Yes” to Question 21, who is the person in relation to you (for example, my sister)?
31. What agency or agencies investigated the alleged crime(s)?
32. How do you feel about the experience?
33. Would this experience cause you to favor one side over the other?
- ☐ Yes
  - ☐ No
  - ☐ Unsure
34. If you answered “Yes” or “Unsure” to Question 25, please explain your answer why you answered “Yes” or “Unsure.”
35. Have you, or a close relative or friend of yours, ever been the victim of a crime?
- ☐ Yes
  - ☐ No

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36. What was the crime(s)?
37. Was someone charged for the crime(s)?
38. Was there a trial?
- ☐ Yes
  - ☐ No
39. If there was a trial, what was the outcome of the trial?
40. If you remember, what police agency or agencies investigated the crime(s)?
41. Would this experience cause you to favor one side over the other?
- ☐ Yes
  - ☐ No
  - ☐ Unsure
42. This trial is scheduled to start [insert start date] and continue until [insert end date]. The daily schedule will be Monday through Thursday, from [insert start time a.m.] to 4:30 or 5:00 p.m. There is no trial on Fridays. There is a lunch break from noon until 1:30 p.m., and usually one mid-morning and one mid-afternoon break. The law provides that a juror can be excused from service only if their absence from work would "tend materially and adversely to affect the public safety, health, welfare or interest", or if service as a juror would impose an undue hardship on the juror.
- [Insert information about financial options available to jurors]
- Is there anything about our anticipated trial schedule that presents an undue hardship for you, whether it be personal, business, or health?
- ☐ Yes
  - ☐ No
  - ☐ Unsure
43. If you answered "Yes" or "Unsure" to Question 34, please describe the hardship.
44. Do you know anyone who works at the [insert county name] County Attorney's Office/Office of the Attorney General?
- ☐ Yes
  - ☐ No
45. If you answered "Yes" to Question 37, please provide the following information:
- b. Who do you know?
  - c. Describe your relationship (for example, we have been friends for 5 years).
  - d. Do you feel your relationship might cause you to favor one side over the other?<sup>1</sup>
46. Do you know anyone who works at the [investigating agency]?
- ☐ Yes
  - ☐ No

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47. If you answered “Yes” to Question 38, please provide the following information:
- d. Who do you know?
  - e. Describe your relationship (for example, we have been friends for 5 years).
  - f. Do you feel your relationship might cause you to favor one side over the other?
48. Do you know anyone who [insert Defense Counsel’s name and/or agency or law firm if requested]?
- ☐ Yes
  - ☐ No
49. If you answered “Yes” to Question 40, please provide the following information:
- d. Who do you know?
  - e. Describe your relationship (for example, we have been friends for 5 years).
  - f. Do you feel your relationship might cause you to favor one side over the other?
50. Is there anything else you think we should know about your ability or willingness to be a juror in this case?
51. For any reason, are you unable or unwilling to sit in judgment of another person?

In signing this questionnaire, I affirm the answers are true.

## Appendix 3C: Written Questionnaire, General Civil (Long)

### WRITTEN CIVIL QUESTIONNAIRE (GENERAL)

Please answer the following questions honestly. [If the judge has decided to seal the questionnaires: Your answers will only be viewed by the judge, the lawyers, and parties.] We use this questionnaire to get information from you to help us pick jurors who will be fair to both sides.

We all have attitudes, feelings, opinions, and life experiences that may affect the way we consider a case. It is okay to acknowledge and talk about these attitudes, feelings, opinions, and life experiences, and we need you to do so to ensure justice is served in this case.

Please do not withhold information. Please make sure your answers are as complete as possible. Complete answers are more helpful and will likely shorten the time it takes to select a jury. Do not be concerned with whether your answers are “right” or “wrong”; this is not any sort of test. Just be honest and candid in your answers.

You are not allowed to do any research regarding this case at all. You may not look up the parties or the lawyer. As a trial juror you must decide the case based on the evidence presented during trial.

If you have trouble reading, understanding, or filling out this questionnaire, please [insert how you want the juror to seek help].

### GENERAL INFORMATION

1. Juror Number:
2. Your Name:
3. Are you a resident of [insert county name] County?  
☐ Yes  
☐ No
4. Are you a citizen of the United States?  
☐ Yes  
☐ No
5. Have you been convicted of a felony?  
☐ Yes  
☐ No
6. If yes, did you restore your civil rights?  
☐ Yes  
☐ No  
☐ Unsure



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7. Do you have difficulty understanding or reading the English language?  
☐ Yes  
☐ No
8. Do you have any difficulty seeing, hearing, or do you have any other medical problems that may affect your ability to serve as a juror?  
☐ Yes  
☐ No  
☐ Unsure
9. If you answered “Yes” or “Unsure” to Question 8, please explain.

### CASE SPECIFIC INFORMATION

10. [CASE SUMMARY listed here]  
  
Have you seen, heard, or read anything about this case?  
☐ Yes  
☐ No
11. If yes, what do you believe you have seen, heard, or read?
12. Have you, or any members of your close family or friends, ever been involved in a case similar to this?  
☐ Yes  
☐ No
13. If yes, please explain.
14. If you answered “Yes” to Question 12, do you feel this experience might cause you to favor one side over the other?  
☐ Yes  
☐ No  
☐ Unsure
15. If you answered “Yes” or “Unsure” to the prior question, please explain why you answered “Yes” or “Unsure.”
16. The following people may testify at trial. Do you think you might know, any of these people?  
☐ Yes  
☐ No

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17. If you answered “Yes” to Question 16, please answer the following questions:
- Which witness do you think you know?
  - How do you know the person?
  - Do you feel your relationship might cause you to favor one side over the other?
    - ☐ Yes
    - ☐ No
    - ☐ Unsure
18. Please explain why you said “Yes” or “Unsure” to Question 17?
19. In a civil case, a party bringing a claim has to prove the claim by a preponderance of the evidence. Burden of proof means burden of persuasion. On any claim or defense, the party who has the burden of proof must persuade you, by the evidence, that the claim is more probably true than not true. This means that the evidence that favors that party outweighs the opposing evidence. In determining whether a party has met this burden of proof, the jury considers all the evidence that bears on the claim, regardless of which party produced it. How do you feel about this standard of proof?
- ☐ The burden of proof is way too low.
  - ☐ The burden of proof is a little bit too low.
  - ☐ The burden of proof is neither too low nor too high.
  - ☐ The burden of proof is a little too high.
  - ☐ The burden of proof is way too high.
  - ☐ I have no opinion on the burden of proof.
20. In a case like this, do you think the plaintiff (i.e., the party filing the lawsuit) or the defense is going to have a harder time convincing you?
- ☐ The defense will have a much harder time.
  - ☐ The defense might have a slightly more difficult time.
  - ☐ Neither.
  - ☐ The plaintiff might have a slightly more difficult time.
  - ☐ The plaintiff will have a much harder time.
21. Some people have attitudes and opinions about the number of lawsuits in Arizona. Which answer most closely identifies with how you feel about lawsuits in Arizona?
- ☐ There are way too many civil lawsuits.
  - ☐ There are slightly too many civil lawsuits.
  - ☐ Neither.
  - ☐ There are slightly too few civil lawsuits.
  - ☐ There are way too few civil lawsuits.
  - ☐ I have no opinion on the number of lawsuits.

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22. Some people have attitudes and opinions about the amount of money awarded in lawsuits. Which answer most closely identifies with how you feel?
- ☐ Juries have awarded way too much money in civil lawsuits.
  - ☐ Juries have awarded slightly too much money in civil lawsuits.
  - ☐ Neither.
  - ☐ Juries have awarded slightly too little money in civil lawsuits.
  - ☐ Juries have awarded way too little money in civil lawsuits.
  - ☐ I have no opinion on the amount of money awarded by juries in civil lawsuits.

23. Please identify the level of credibility or believability of the following people:

### Doctors:

- ☐ Doctors are very credible and believable as witnesses.
- ☐ Doctors have slightly more credibility and believability than other witnesses.
- ☐ I won't know the level of credibility or believability of a doctor witness until I hear the testimony and consider it in the light of other testimony and evidence.
- ☐ Doctors have slightly less credibility and believable than other witnesses.
- ☐ Doctors have much less credibility and believable than other witnesses.
- ☐ Other. Please explain your answer.

### Chiropractors:

- ☐ Chiropractors are very credible and believable as witnesses.
- ☐ Chiropractors have slightly more credibility and believability than other witnesses.
- ☐ I won't know the level of credibility or believability of a chiropractor witness until I hear the testimony and consider it in the light of other testimony and evidence.
- ☐ Chiropractors have slightly less credibility and believable than other witnesses.
- ☐ Chiropractors have much less credibility and believable than other witnesses.
- ☐ Other. Please explain your answer.

### Law Enforcement Officers:

- ☐ Law Enforcement Officers are very credible and believable as witnesses.
- ☐ Law Enforcement Officers have slightly more credibility and believability than other witnesses.
- ☐ I won't know the level of credibility or believability of a Law Enforcement Officers witness until I hear the testimony and consider it in the light of other testimony and evidence.
- ☐ Law Enforcement Officers have slightly less credibility and believable than other witnesses.
- ☐ Law Enforcement Officers have much less credibility and believable than other witnesses.
- ☐ Other. Please explain your answer.

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24. Do you have any opinions about medical providers that might cause you to favor one side over the other?  
☐ Yes  
☐ No  
☐ Unsure
25. Have you, your significant other, or a close family member, studied or practiced medicine?  
☐ Yes  
☐ No
26. If you answered “Yes” to Question 25, who is the person in relation to you (for example, my sister)?
27. What type of medical training did the person or people have?
28. Would this experience cause you to favor one side over the other?  
☐ Yes  
☐ No  
☐ Unsure
29. Have any of you, or any members of your family or close friends, ever served in a law enforcement (either civilian or military)?  
☐ Yes  
☐ No
30. If you answered “Yes” to Question 29, who is the person in relation to you (for example, my sister)?
31. What agency or agencies did the person or people work for?
32. Would this experience cause you to favor one side over the other?  
☐ Yes  
☐ No  
☐ Unsure
33. Have you, your significant other, or a close family member, studied or practiced law or had training in the law?  
☐ Yes  
☐ No
34. If you answered “Yes” to Question 33, who is the person in relation to you (for example, my sister)?
35. What type of legal training did the person or people have?

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36. Would this experience cause you to favor one side over the other?
- ☐ Yes
  - ☐ No
  - ☐ Unsure
37. Have you, or a close relative or friend of yours, ever been involved in a motor vehicle accident?
- ☐ Yes
  - ☐ No
38. If you answered “Yes” to Question 37, please describe what happened.
39. Was there a lawsuit?
- ☐ Yes
  - ☐ No
40. How was the matter resolved?
41. Would this experience cause you to favor one side over the other?
- ☐ Yes
  - ☐ No
  - ☐ Unsure
42. This trial is scheduled to start [insert start date] and continue until [insert end date]. The daily schedule will be Monday through Thursday, from [insert start time a.m.] to 4:30 or 5:00 p.m. There is no trial on Fridays. There is a lunch break from noon until 1:30 p.m., and usually one mid-morning and one mid-afternoon break. The law provides that a juror can be excused from service only if their absence from work would “tend materially and adversely to affect the public safety, health, welfare or interest”, or if service as a juror would impose an undue hardship on the juror.
- [Insert information about financial options available to juror]
- Is there anything about our anticipated trial schedule that presents an undue hardship for you, whether it be personal, business, or health?
- ☐ Yes
  - ☐ No
  - ☐ Unsure
43. If you answered “Yes” or “Unsure” to Question 42, please describe the hardship.
44. Have you ever been called as a witness in court?
- ☐ Yes
  - ☐ No
45. If you have been called as witness before, please describe the type of case and why you were called as a witness.

## Report and Recommendations

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46. If you have served on a jury before, please answer the following questions:
- What type of case was it or what was it about?
  - How long ago was your service as a juror?
  - Did the jury reach a verdict?
  - What was the verdict if you remember?
  - Were you the foreperson.?
47. What is your age?
48. What is the highest level of education you completed?
- ☐ Grade school or less
  - ☐ Some high school
  - ☐ High school graduate
  - ☐ Some college
    - What was your major?
  - ☐ College graduate
    - What was your major?
  - ☐ Post graduate study
    - Please describe the graduate program.
  - ☐ Technical, vocational, or business school
    - Please describe the type of program.
  - ☐ Other
    - Please explain.
49. What is your current employment status?
- ☐ Employed full time
  - ☐ Employed part time
  - ☐ Retired
  - ☐ Student
  - ☐ Unemployed looking for work
  - ☐ Unemployed not looking for work
  - ☐ Caregiver or homemaker
  - ☐ Other
    - Please explain.
50. Do you know anyone who works at [law office of plaintiff's counsel]?
- ☐ Yes
  - ☐ No
51. If you answered "Yes" to Question 50, please provide the following information:
- Who do you know?
  - Describe your relationship (for example, we have been friends for 5 years).
  - Do you feel your relationship might cause you to favor one side over the other?<sup>1</sup>

## Report and Recommendations



52. Do you know anyone who works at [insert law office of defense counsel]?
- ☐ Yes
  - ☐ No
53. If you answered “Yes” to Question 52, please provide the following information:
- a. Who do you know?
  - b. Describe your relationship (for example, we have been friends for 5 years).
  - c. Do you feel your relationship might cause you to favor one side over the other?
54. Is there anything else you think we should know about your ability or willingness to be a juror in this case?
55. For any reason, are you unable or unwilling to sit in judgment of another person?

### OTHER QUESTIONS

56. [Party] is a [business/corporation/governmental agency]. Every party is entitled to justice under the same legal standards. Will you apply the same legal standards to a [business/corporation/governmental agency] as you do to the other side?
- ☐ Yes
  - ☐ No
  - ☐ Unsure
57. If you answered “Yes” or “Unsure” to Question 56, please explain.
58. [Insert language other than English] will be spoken during this trial and the party/victim/witnesses will use an interpreter because they are more comfortable hearing what is said in [Insert language other than English]. How do you feel about the use of interpreters during trial?
59. Do you read, write, or understand [Insert language other than English]?

In signing this questionnaire, I affirm the answers are true.



## Appendix 4A: Online Questionnaire; General Criminal (Long)

<https://forms.office.com/g/DqYBz2k528>

or use the QR Code below:



## Appendix 4B: Online Questionnaire; General Criminal (Short)

<https://forms.office.com/g/zmLsEE9yYW>

or use the QR Code below:



## Appendix 4C: Online Questionnaire; General Civil (Long)

<https://forms.office.com/g/kzGXCuFbQp>

or use the QR Code below:





## Report and Recommendations of the Statewide Jury Selection Workgroup

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